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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 246. 25

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, APPELLANT,

vs.

CHARLES WENZEL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 25, 1886.

See

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 14, 1889.

branches should be definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections as should be equal to such lands as the United States had sold or otherwise appropriated or to which the rights of pre-emption had attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) should be held by the Territory or future State of Minnesota for the use and purpose aforesaid: Provided, That the land to be so located should in no case be further than fifteen miles from the lines of said roads or branches and selected for and on account of each of said
2 roads or branches: Provided further, That the lands thereby granted for and on account of said roads and branches, severally, should be exclusively applied in the construction of that road for and on account of which said lands were thereby granted and should be disposed of only as the work progressed, and that the same should be applied to no other purpose whatsoever: And further provided, That any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever be, and the same were thereby, reserved to the United States from the operation of such act, except so far as it might be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only should be granted, subject to the approval of the President of the United States; that in and by section two of said act it was further enacted that the sections and parts of sections of lands which by such grants should remain to the United States, within six miles on each side of said roads and branches, should not be sold for less than double the minimum price of the public lands when sold, nor should any of said lands become subject to private entry until the same should have been first offered at public sale at the increased price; that in and by section three of said act it was further enacted that the said lands by said act granted to said Territory or future State should be subject to the future disposal of the Legislature thereof for the purposes in said act expressed and no other, and that the said rail-
3 roads and branches should be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; that in and by section four of said act it was further enacted that the land by said act granted to said Territory or future State should be disposed of by said Territory or future State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and

twenty sections for each of said roads and branches and included within a continuous length of twenty miles of each of said roads and branches might be sold; and when the Governor of said Territory or future State should certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches were completed, then another quantity of land by said act granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed as aforesaid and included within a continuous length of twenty miles of each of such roads or branches might be sold, and so, from time to time, until said roads and branches should be completed, and if any of said roads or branches was not completed within ten years no further sale should be made, and that the lands unsold should revert to the United States.

Territorial act of May 22, 1857, creating the M. & P. R. R. Co.

And your orator further states and shows that the Legislative Assembly of the said Territory of Minnesota in and by an act entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections — to the State of Alabama to aid in the construction of a certain railroad in said State' and granting certain lands to railroad companies therein named," approved May 22, 1857, created and declared certain persons named in said act a body politic and corporate, by the name and style of the Minnesota and Pacific Railroad Co., and with the powers, rights, and franchises in said act specified, with the power, among other things, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad with one or more tracks or lines of rails on such route, and with such alignment and graduation as such company might think proper, from Stillwater, by the way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood river, with a branch from St. Anthony via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina river, the said railroad and branch being one of the railroads and branches specially mentioned in said act of Congress of March 3, 1857; and for the purpose of aiding in the construction of said railroad and branch all the interest and estate, present and prospective, of said Territory and of the future State which should succeed to it in or to any or all of the lands granted by the Government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, to the point thereinbefore mentioned, agreeable to the terms of said act of Congress, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, were thereby granted to said company, conditioned that said land should be exclusively applied to the construction of that road

for which it was granted: And provided, That said lands should vest in said company in the manner following: Whenever twenty or more continuous miles of said road should have been located the Governor of the Territory or future State should certify the same to the Secretary of the Interior, and thereupon the title to 120 sections of said lands should vest in said companies, and when twenty continuous miles of said road should have been completed so as to admit of running regular trains on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of 120 sections of said lands should vest in said company until said roads should be completed, and that it should be the duty of the Governor so to certify to the Secretary of the Interior whenever any such twenty miles should be completed so as to admit of running regular trains of cars over the same, and the Governor should, in his official capacity and on behalf of the Territory or State and under the great seal thereof, execute and deliver to the said company, whenever it should, by virtue of the provisions of said territorial act, be entitled to any of said lands, a deed in fee simple of any and all of the lands to which said company should be entitled; that the location and designation
6 of the route and line of said railroad and branch should be made by said company and reported to the Governor from time to time; that the said Minnesota and Pacific Railroad Company in and by said act was expressly authorized and empowered in its corporate capacity to borrow money from any person or persons, corporation or body politic of any kind, and for any rate of interest which might be agreed upon by and between said company and any person of whom such loan might be obtained, any law on the subject or usury of said Territory or future State or any State where such transaction might be made to the contrary notwithstanding, and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other obligations and securities in amount and kind as might be deemed expedient by said company in consideration of any such loan or in discharge of any liabilities which it might incur in the construction, repair, equipment, or operation of said road, and in its corporate capacity to make, execute, issue, and deliver its bonds or obligations in any amount which the directors thereof might deem necessary or expedient, and to prescribe the sum or sums for which each of such bonds should be issued, the time or times and place or places when and where the principal and interest of the same should be payable, the person or persons, trustee or trustees, to whom or to which they should be payable, and whether payable to order or bearer or how otherwise negotiable, the rates of interest which said bonds should bear, and the manner and form in which the interest coupons annexed to them should be executed; and, for the purpose of securing the payment of all or any of such bonds, in its corporate capacity to make, execute, and de-
7 liver one or more mortgages or deeds of trust upon the whole or any part of its railroad or branches, constructed or authorized to be constructed, and of the estate granted by said act, and any and all other of its estate, real, personal, or

mixed, in possession or expectancy, and in and by such mortgage or deed of trust to confer upon the trustee or mortgagee full and ample powers to enter into and upon and take possession of, have, use, and employ, or to sell and dispose of, the whole or any part of said railroad and branches and all corporate and other franchises, rights, and privileges of said company, and in case of any such sale to grant and convey to the party or parties acquiring title under such sale, and their associates, successors, and assigns, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by such mortgage or deed of trust enumerated and conveyed which belonged to or were enjoyed by said company as fully and absolutely in every respect as said Co., its bondholders, officers, and agents, might or could have done if such sale or foreclosure had not taken place; that the directors of said company were in and by said act authorized and empowered to prescribe by resolution, to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust and of its execution and delivery, and that said company, in and by said act, was authorized and empowered, through its agents or brokers or otherwise, at any place to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds, so as aforesaid authorized to be issued, at par or at any price less than par, and for such sum or sums and on such terms as to the
8 said company, its agents or brokers, should appear most for its interest.

And your orator further shows that the said company, after the passage of said act of said Legislative Assembly, and on the 25th day of May, A. D. 1857, duly organized, and after such organization, by a resolution duly passed by its board of directors, accepted said act; and a copy of such resolution, certified by the president and secretary of said company under its corporate seal, was on the same day duly filed in the office of the secretary of said Territory.

Acceptance of M. and P. R. R. Co. of act of May 22, 1857.

And your orator further shows that the said Minnesota and Pacific Railroad Company entered upon the execution of the trust by said act committed to it, and commenced the survey, location, and construction of the railroad and branch which by said act it was authorized to build and operate and located the line of its main road from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, and filed a map thereof, with resolutions adopting the same, in the office of the Governor of the said Territory of Minnesota on the 12th day of November, A. D. 1857, and on or about the date last aforesaid said map and location of said main line terminating at Breckenridge were filed in the office of the General Land Office, at Washington, and were thereupon approved by the Secretary of the Interior; that a map of the definite location of the
9 said branch line via Anoka, St. Cloud, and Crow Wing to St. Vincent, near the mouth of the Pembina river,

Location and construction of roads.

duly adopted by said company, was in like manner filed in the office of the Governor of said Territory and in the General Land Office, at Washington, and was duly approved by the Secretary of the Interior on or about the date last aforesaid; and that said company did, in fact, thereafter actually construct and complete, ready for placing the superstructure thereon, about sixty miles of such railroad, and did, in fact, receive Minnesota State railroad bonds isssued and delivered to it by the Governor of the State of Minnesota to the amount of not less than six hundred thousand dollars, under and pursuant to the provisions of section ten of article nine of the constitution of said State, as amended on the 15th day of April, A. D. 1858, which said bonds were so issued and delivered to said company upon evidence produced and securities given by said company, as prescribed and required in and by said section ten of article nine as amended as aforesaid, and in and by an act of the Legislature of said State entitled "An act concerning land-grant railroads," approved on the 12th day of August, A. D. 1858; but that no part of said railroad had been actually completed with the cars running thereon at the time of the passage of the act of said Legislature, approved March 6, A. D. 1860, entitled "An act in addition to an act entitled 'An act concerning land-grant railroads,' passed August 25, A. D. 1858;" that after the passage of said act last mentioned, default having been made by said Minnesota and Pacific Railroad Co. in the payment of interest on the first-mortgage bonds of said company, issued to and held by the said State of Minnesota and the trustees under the deed of trust or mortgage executed by said company upon all its rights, franchises, and property given to secure said bonds, having neglected to foreclose the same, the Governor of said State did proceed to foreclose, and did, in fact, foreclose such deed of trust in conformity with the provisions thereof and in accordance with the statute in such case made and provided, and upon the sale of the said property, rights, and franchises covered by and embraced in said trust deed upon and under such foreclosure thereof made on or about the 23rd day of June, A. D. 1860, did bid off and purchase the same for and on behalf of said State of Minnesota, whereby all and singular the property, rights, and franchises of the said Minnesota and Pacific Railroad Company became and were vested in said State; that the said Minnesota and Pacific Railroad Company, notwithstanding it afterwards duly accepted that certain act of the Legislature of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad," approved March 8, A. D. 1861, and paid the costs and expenses and made the deposit prescribed in the fourth section of said act, wholly failed to construct, put into operation, and equip for business any part or portion of its said railroad, so that at the time of the passage of the act of said Legislature of March 10th, A. D. 1862, hereinafter mentioned, no part or portion whatever thereof had been constructed, put into operation, or equipped for business.

Trust deed by company.

Foreclosure of same for the State of Minnesota.

And your orator further shows that by an act of the Legislature

State act granting lands, etc., of M. & M. R. R. Co. to St. P. & P. R. R. Co.

of the State of Minnesota entitled "An act to
11 facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, it was provided and declared, among other things, that all the rights, benefits, property, privileges, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the said company theretofore done or suffered, or by virtue of any law of the State or the constitution thereof or of the former Territory of Minnesota, or by reason of any sale of the same or any part thereof by the Governor of the State on the twenty-third day of June, A. D. 1860, and bid in and purchased for the benefit of the State, were thereby granted and transferred to Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee, their associates and successors, for the purpose and on the terms and conditions thereafter and in said act provided, free and clear of all claims and liens thereon and free from all liens and claims by or to the State of Minnesota, except as thereinafter provided; that all the rights, privileges, franchises, lands, property, and interest granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the act of said Territory approved May 22, A. D. 1857, were thereby continued and granted to and vested in the said Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William
12 Lee and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minnesota and Pacific Railroad Company had or might or could have by reason of the passage of said act, free and clear of all claims and liens of the State of Minnesota against the same, except such as were retained by the provisions of said act, and that the said persons thereinbefore named and their associates and successors should thereafter be known as the St. Paul and Pacific Railroad Company, and by that name might sue and be sued and have and exercise all the powers, rights, and privileges which theretofore pertained to the the Minnesota and Pacific Railroad Co. by the act thereinbefore referred to or by any other act or law, and that the persons thereinbefore named should be directors of the said The St. Paul and Pacific Railroad Company for one year and until others should be elected or appointed in their places; that the provisions in said act contained were upon the conditions that the said The St. Paul and Pacific Railroad Company should complete and put into operation and fully equip for business that portion of said main line of said road extending from St. Paul to St. Anthony on or before the first day of September next thereafter, and that portion of the branch line of said road extending from Saint Anthony to Anoka by the first day of January, eighteen hundred and sixty-four, and to St. Cloud by the first day of January, A. D. 1865, and those portions of the main line of said road extending

from Stillwater to Saint Paul and from St. Anthony by way of
13 Minneapolis westwardly to the west line of range thirty
within one year from the expiration of the time therein last aforesaid, and to Little Falls by the first day of January, eighteen hundred and sixty-six, and thereafter to continue to construct and put into operation, fully equipped for business, the said road or branch at the rate of thirty miles annually, and all of said road or branch on or before the third day of March, eighteen hundred and sixty-seven; that in and by section six of said act it was enacted that for the purpose of aiding in the construction of the St. Paul and Pacific railroad and the branch thereof all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a road from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of (Big) Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, agreeably to the terms of the act of Congress approved March 3, A. D. 1857, together with all and singular the rights, privileges, and immunities conferred and intended to be conferred by said act of Congress, were thereby granted to said St. Paul and Pacific Railroad Company, conditioned that said land should be applied to the construction and equipment of said road and for no other purpose whatever, and that whenever said company should actually complete that portion of the road between St. Paul and St. Anthony so that regular trains of cars should be running thereon, and not before, the Governor should certify the same to the Secretary
of the Interior, and thereupon the title to one hundred and
14 twenty sections of land should vest in said company, and that
when twenty continuous miles of said road should be completed and regular trains running thereon the title to a further quantity of one hundred and twenty sections of land should vest in said company; that when twenty continuous miles of said road should be completed and regular trains running thereon the title to a further quantity of one hundred and twenty sections of land should vest in said company; that whenever said company should actually complete twenty continuous miles of said road from Minneapolis westwardly so as to admit of the running of regular trains of cars on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in the said company, and that so on, as often as any further twenty continuous miles of said road should be completed so as to admit of running of regular trains of cars thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of said land should vest in said company, and that it should be the duty of the Governor whenever said road should be completed between St. Paul and St. Anthony, in his official capacity and on behalf of the State, to convey to said company one hundred and twenty sections of land, and that whenever any further twenty continuous miles of said road or its branches should be

completed and in operation the Governor should in like manner convey a further quantity of one hundred and twenty sections of land, and so on, as often as any further twenty continuous
15 miles of said road or its branches should be completed, should in like manner convey to said company a further quantity of one hundred and twenty sections of land until there should be conveyed to said company all the lands to which they should be entitled according to the terms and provisions aforesaid: Provided, That upon the written authority of said company filed with the State treasurer said lands, when the company should be entitled thereto, might be conveyed to [by] the State directly to the assigns of said company.

Joint resolution authorizing change of branch lines.

And your orator further shows that by a joint resolution of the Congress of the United States to authorize the State of Minnesota to change the line of certain branch railroads in said State and for other purposes, approved July 12th, A. D. 1862, it was recited that by an act of Congress approved March 3, A. D. 1857, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, via St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, the northern terminus of which was fixed by the Legislature of said Territory at St. Vincent, and that it was believed that the public interests required a change of location of a part of said branch. It was therefore resolved and declared that in lieu of that part of the railroad grant to Minnesota Territory by said act of Congress of March 3, 1857, which extended northwesterly from the intersection of the tenth standard paral-
15½ lel with the fourth guide meridian there should be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State might designate, having a southwestern terminus at any point on the existing line between the falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided such resolution should take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by said act of March 3, A. D. 1857, being by said acceptance disincumbered of the railroad grant, should be dealt with as other public lands of the United States.

State act accepting provisions of joint resolution.

And your orator further shows that the Legislature of said State of Minnesota, by an act entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," approved March 6, A. D. 1863, *it was* enacted that the provisions of said joint resolution of Congress approved July 12th, A. D. 1862, were accepted, and the Saint Paul and Pacific Railroad Company was thereby authorized and empowered to survey, locate,

construct, and maintain, in conformity with the said joint resolution of Congress, within the State of Minnesota a new branch railroad,
16 having its southwestern terminus at or above some point opposite the town of St. Cloud, upon the existing branch line of said "The St. Paul and Pacific railroad," and extending from thence in a northeasterly direction, by such route as they might select, to the navigable waters of Lake Superior at or near the mouth of Pigeon river, by way of Duluth, and the said "The Saint Paul and Pacific Railroad Company" should be entitled to have, receive, and to hold, and there was thereby granted to it, all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution of Congress, and that the said company might construct and operate the line of road therein provided for in accordance with the terms and provisions of the act of the Legislature of said State approved March 10th, A. D. 1862, and that for the purpose of constructing said branch railroad the said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by said last-named act and the act to which it was amendatory, so far as the same might be applicable: Provided, That the grants and franchises thereby conferred or extended were made upon the express condition that they should in nowise inure to the line of road then located or constructed, or to be located or constructed thereafter, under the powers of the act of incorporation of the said Saint Paul and Pacific Railroad Company, and also that no act or deed of said company should be competent to embarrass or incumber the grants or franchises thereby made for any purpose connected with the line or lines of road contemplated by the then existing charter of
17 the said railroad company.

State act relating to disposition of grant and for agreement with holders of special stock.

And your orator further shows that by an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved February 6, A. D. 1864, it was, among other things, provided that whenever the St. Paul and Pacific Railroad Company should complete ten consecutive miles of the main line of its railroad from some point on the then constructed line in St. Anthony by the way of Minneapolis westerly, with regular trains running thereon, the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections should vest in said company, and so on, as often as any further twenty continuous miles should be completed, with regular trains running thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of land should vest in said company; that the St. Paul and Pacific Railroad Company should have the right to relocate the lines of its road and branches so as to run and construct the main line from St. Anthony, by way of Minneapolis, to any point between the foot of Big Stone Lake and the mouth of Sioux Wood river and the branch from St. Anthony to the Red River of the North, so as to run and construct the same from some

point at or near St. Cloud to any point in the international
18 boundary near the Red River of the North, and that it should not be required of said company to construct or maintain the said branch road by way of Crow Wing; that the said company should complete those portions of its road from Stillwater to St. Paul and from St. Anthony by way of Minneapolis westerly to the distance of twenty miles within two years, and the remaining portion of the main line and that part of the branch line from St. Cloud to the Red River of the North within five years, and that there should be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified, and that the said company was thereby authorized and empowered to extend, survey, locate, construct, maintain, and operate its road from some point at or above St. Cloud to the westerly end of Lake Superior; and, for the purpose of extending, locating, constructing, and operating the same, that said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by its charter and which were applicable to any other portion of its road or branch road, and that the said St. Paul and Pacific Railroad Company should have power to create and issue in such manner and on such terms as it might deem expedient on [one] or more classes of preferred stock and special stock, and to make such agreement as it might deem proper with the respective holders thereof as to the dividends thereon and the securities for such dividends, and to make such agreements as it might deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroad which it might construct or otherwise acquire to the payment of dividends on such special
19 stock as might be issued in respect thereto, which appropriation as made by such agreement should be effectual to secure to the said and future holders of such stock the application of such net earnings as in said agreement provided against any future act of the company or any of its general liabilities, and that said company might make such agreements as it might deem proper with the holders of any such special stock as to the administration of the portion of said railroad and the land grant appertaining thereto to which said stock might pertain, and for the separate organization of the holders of such special stock for the purpose of that administration and enabling them or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock might pertain all the powers of the company, subject to the provisions of such agreement when made and entered into.

Organization of holders of special stock as the First Division of the St. P. & P. R. R. Co.

And your orator further shows that on or about the 6th day of February, A. D. 1864, preferred or special stock having been theretofore duly issued on the line of the road of the said Saint Paul and Pacific Railroad Company from St. Paul to Watab to the amount of thirty-five hundred shares, and on the line of its said road from St. Anthony to the point between the foot of the Big

Stone Lake and the mouth of the Sioux Wood river to a very large amount, the holders thereof, under and in pursuance of the
20 aforesaid act of the Legislature, met at St. Paul, in said State, on or about said sixth day of February, A. D. 1864, and organized a corporation known as and called the First Division of the St. Paul and Pacific Railroad Company, and elected the proper officers therefor, whereby a corporation was organized known as and called the First Division of the St. Paul and Pacific Railroad Company, owning and controlling the said line of railroad from St. Paul to Watab, and also that known as the main line from St. Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river, together with all the rights, privileges, and franchises belonging thereto or in any manner connected therewith; all of which said acts and doings were ratified and confirmed by the act of the Legislature hereinafter set forth, approved February 6th, A. D. 1866; that on said sixth day of February, A. D. 1864, only that portion of said railroad extending from St. Paul by way of St. Anthony to Anoka, a distance of about thirty miles, had then been completed and equipped, with the cars running thereon; that previous to said organization of the First Division of the St. Paul and Pacific Railroad Company the St. Paul and Pacific Railroad Company duly created and issued to one E. B. Litchfield the said preferred and special stock hereinbefore mentioned pertaining to that portion of the lines or road of said St. Paul and Pacific Railroad Company which extended from St. Paul to Watab and from St. Anthony to Breckenridge, and thereupon entered into an agreement with him, the said Litchfield, whereby said company transferred to him as the owner and holder of such preferred and special stock the said
21 lines of road to which it so pertained, together with the franchises and lands appertaining thereto, under which agreement and in accordance with its provisions the said Litchfield, with sundry other persons, to whom he had assigned and transferred shares of the said preferred and special stock, on the same day formed and organized the said First Division of the St. Paul and Pacific Railroad Company, and that a report of such organization, with a copy of such agreement, was thereupon duly filed in the office of the secretary of state of the State of Minnesota on the 4th day of May, A. D. 1864, and to which when produced your orator begs leave to refer for greater certainty.

Act extending time for completion of road.

And your orator further shows that the Legislature of the State of Minnesota, by an act entitled "An act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches," approved March 2, A. D. 1865, enacted, among other things, that the time for the grading and completion of the respective portions of the line of railroad of the St. Paul and Pacific Railroad Company as then fixed by law should be extended for the period of two years, and that all the rights, privileges, franchises, and lands conferred by the act of the Legislature of the State of Minnesota approved March 10th, A. D. 1862, should be restored, released, and granted to the said company free and clear of all claim and lien of the said State thereto, and that

the said company should have the right and power to extend and construct said road from Winona to La Crescent: Provided, and said act was upon the express condition, that said company should equip
22 and complete that portion of the road from Elk river to St. Cloud, with the cars running thereon, on or before the first day of September, A. D. 1866, and from thence in a northerly direction to St. Vincent, on the international boundary line, within the time limited by law; also that the said company should build that portion of the said road theretofore known as the St. Paul and Winona Branch by the way of and through the following cities and villages, to wit: Hastings, Red Wing, Lake City, Wabasha, and Minneiska: And provided, That said company should, on or before the first day of July, A. D. 1866, remove its track from the line through First street, in St. Anthony, to a line not nearer the Mississippi river than Sixth street, except that it might depart from the above requirement so far as might be necessary in the extension and construction of its road across the Mississippi river; that any and all additional grants of land made prior to the passage of such act or which might thereafter be made by the Congress of the United States to the State of Minnesota for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the Saint Paul and Pacific Railroad Company should enure to the benefit of said company, and said lands and *that* the present or future interest of the State in or to them were thereby granted and assigned to the said company upon the same terms and conditions as the lands theretofore granted for the same purpose, together with the conditions contained in the said act of Congress donating the same, and that the title of all lands theretofore or thereafter granted by Congress to said State for the purposes aforesaid should vest in
23 the company at the time and upon the terms prescribed by said act or acts of Congress making the grant, and that it should be the duty of the Governor, on behalf of the State, to convey to said company the lands so granted according to the terms and provisions contained in the act or acts aforesaid, and that said act should take effect from and after its passage, and that the same and all acts relating to the Saint Paul and Pacific Railroad Company and to the lines authorized to be constructed by them were thereby declared to be public acts; and your orator shows that at the time of the passage of said act a bill was pending in the Congress of the United States for an increase or enlargement of said land grant hereinbefore mentioned, and which it was then believed would pass, and which on the next day was, in fact, passed and became operative as next hereinafter set forth, and the benefit of which the said State desired and intended to accept, and did, in fact, thereafter accept.

Increase of grant, March 3, 1865.

And your orator further states and shows that by an act of Congress of the United States entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa and for other purposes," approved March 3, A. D. 1865, the quantity of lands granted to the State of Minnesota to aid in the con-

struction of certain railroads in said State by the act of March 3, A. D. 1857, aforesaid was increased to ten sections per mile for each of said railroads and branches, subject to any and
24 all limitations contained in said act and subsequent acts and as thereinafter provided; that in and by section 2 of said act the first proviso in the first section of said act of March 3, A. D. 1857, was so amended as to provide that the land to be so located should in no case be further than twenty miles from the lines of said road and branches to aid in the construction of each of which said grant was made, and that said lands granted should in all cases be indicated by the Secretary of the Interior; that in and by section three of said act it was enacted that any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever were thereby reserved and excepted from the operation of said act, except so far as it might be found necessary to locate the route of said road through such reserved lands, in which case the right of way should be granted, subject to the approval of the President of the United States, provided that any lands which had been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands might be located within the limits of such extension of said grant or grants should be deducted from the full quantity of lands thereby granted, and that any lands which had been so granted should be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law; that by section four of said act it was further enacted that the sections and parts of sections of land which by said acts and such grant should remain to the United States within ten miles
25 on each side of said roads and branches should not be sold for less than double the minimum price of public lands when sold, nor should any of such lands become subject to sale at private entry until the same should have been first offered at public sale to the highest bidder at or above the minimum price aforesaid, provided that actual *bona fide* settlers under the pre-emption laws of the United States might, after the proof of settlement, improvement, and occupation, as then provided by law, purchase the same at the increased minimum price, and provided also that settlers under the provisions of the homestead law who should comply with the terms and requirements of said acts should be entitled to patents for an amount not exceeding eighty acres each, anything in said act to the contrary notwithstanding; that in and by section five of said act it was further enacted that the lands thereby granted should be subject to the disposal of the Legislature of the State of Minnesota for the purposes aforesaid and no other, and that said railroads and branches should be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States; that in and by section six of said act it was enacted that the lands theretofore and by said act granted to the Territory or State of Minnesota should be disposed of by said State for the purpose aforesaid only

and in manner following, viz: When the Governor of said State should certify to the Secretary of the Interior that any section of ten consecutive miles of said road was completed in a good, substantial, and workmanlike manner as a first-class railroad, and the said
26 Secretary should be satisfied that the said State had complied in good faith with such requirement, the Secretary of the Interior should issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road and no further; and when the Governor of said State should certify to the Secretary of the Interior, and the Secretary should be satisfied, that another section, ten consecutive miles in extent, connecting with the preceding section or with some other first-class railroad which might be at the time in successful operation, was completed as aforesaid the said Secretary of the Interior should issue to the said State patents for all the lands granted and situated opposite to and within the limit of twenty miles of the line of said completed section of road or roads and extending the length of said section and no further, not exceeding ten sections per mile, for all that part of said road thus completed under the provisions of said act and the act of March 3, A. D. 1857, and so from time to time until said road and branches should be completed, and that when the Governor of said State should so certify and the Secretary of the Interior should be satisfied that the whole of any one of said roads and branches was completed in a good, substantial, and workmanlike manner as a first-class railroad the said Secretary of the Interior should issue to said State patents for all lands granted for and on account of said completed road and branches in said act situated within the said
27 limits of twenty miles from the line thereof throughout the entire length of said road and branches, provided that nothing therein contained should interfere with any existing rights acquired under any law of Congress theretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads, and provided, that no land should be granted and conveyed to said State under the provisions of said act on account of the construction of any railroad or part thereof that had been constructed under the provisions of any other act, at the date of the passage of this act, and adopted as part of the line of railroad provided for in this act; and provided further, that said lands, granted by this or prior acts, should not in any manner be disposed of except as the same should be patented under the provisions of this act; and should the State fail to complete any one of said roads or branches within eight years after the passage of this act then the said lands undisposed of as aforesaid, granted on account of said roads or branches, should revert to the United States; that in and by section nine of said act it was enacted that the provisions of said act should also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July 12th, 1862, entitled "A joint resolution authorizing the State of Minnesota to

change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated;
28 that at the time of the passage of said act no part of the main line of said road from St. Paul to Breckenridge had been built or constructed, and that only that portion of the branch line lying between St. Paul and Elk river, a distance of thirty-eight miles, had then been built and completed.

State act confirming organization, etc., of First Division of St. P. and P. R. R. Co.

And your orator further shows that the Legislature of the State of Minnesota in and by an act entitled "An act to legalize and confirm the organization, acts, and proceedings of the First Division of the St. Paul and Pacific Railroad Company, and in relation to the character and powers of said company," approved February 6th, A. D. 1866, it was enacted that the holders of the preferred stock and special stock issued by the St. Paul and Pacific Railroad Company, under the authority of an act of the Legislature of the State of Minnesota, approved on the 6th day of February, A. D. 1864, and as recited in the agreement made on the same day, under the said act between the said company and E. B. Litchfield, of which agreement a copy, with a report of the organization thereunder, was filed in the office of the secretary of State on the 4th day of May, A. D. 1864, under and pursuant to an act of the said Legislature, approved March 4th, A. D. 1864, should be, and were thereby, authorized to use, possess, enjoy, and exercise all the rights, benefits, privileges, property, franchises, powers, and interests of the Saint Paul and Pacific Railroad Company as a body corporate, belonging or pertaining to that portion of the lines or road of said company which extends from St. Paul to Watab, Benton county, in-
29 cluding all the lands granted by Congress to aid in the construction of the road of said company, and which belong or pertain to such portion of said road, and all the rights, benefits, privileges, property, franchises, powers, and interests of said company as a body corporate as aforesaid, belonging or pertaining to that portion of said lines or road of said company which extends from St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, including all the lands granted by Congress to aid in the construction of that portion of the lines or road of said company last above mentioned, subject only to the provisions of said agreement, and subject to all the conditions and limitations respecting the construction and completion of said road or of any part thereof imposed by existing laws: Provided, That nothing in said agreement or the acts of said company in pursuance thereof affecting in any manner any of the lands donated by Congress for the purpose of constructing or appertaining to that portion of the St. Paul and Pacific railroad extending from Stillwater to St. Paul should be deemed to be ratified or confirmed by said act, but that all the lands belonging and originally designed for and appropriated to the construction of said road from Stillwater to St. Paul should remain irrevocably dedicated thereto, and

the acceptance by the First Division of the St. Paul and Pacific Railroad Company of said act, either by resolution or by acting under it, should be deemed a full release to the State of Minnesota of any and all rights which said First Division of the St. Paul and Pacific Railroad Company might have acquired in or to any of the
30 lands by virtue of such agreement; that the holders of the aforesaid preferred stock and special stock, their successors and assigns, should be and were authorized to use, possess, enjoy, and exercise all and singular the said rights, benefits, privileges, property, franchises, powers, and interests under the corporate name and style of the First Division of the St. Paul and Pacific Railroad Company, and by that name should have perpetual succession, and should have and enjoy all the powers, privileges, franchises, and immunities incident to a corporation, and might acquire by purchase or otherwise and hold, convey, sell, and lease property and estates, either real, personal, or mixed; make, have, and use a common seal, and alter and renew the same at pleasure; sue and be sued, plead and be impleaded, answer and be answered, defend and be defended against, contract and be contracted with, and generally do and perform all and every act and thing which might be necessary or requisite to the full enjoyment and exercise of all and singular the privileges, franchises, powers, rights, benefits, property, and interests by said act and said agreement transferred to or conferred upon them; and that the organization of the holders of said preferred and special stock, under the name of the First Division of the St. Paul and Pacific Railroad Company, in pursuance of the act of the Legislature and of the agreement thereinbefore referred to, and all the acts and proceedings of said organization not contrary to law nor to the terms of said agreement, were thereby sanctioned, con-
31 firmed, and legalized; that by reason of the premises and of said agreement the said First Division of the St. Paul and Pacific Railroad Company, upon its organization as aforesaid, became entitled to and vested with all and singular the corporate powers and franchises, and all the rights, privileges, property, benefits, immunities, and lands of the said St. Paul and Pacific Railroad Company belonging or appertaining to the line of railroad in said agreement specified, to wit, the said lines extending, the one from St. Paul by way of St. Anthony to Watab, and the other from St. Anthony to Breckenridge and which were commonly known as and called the first branch line and the other the main line of the said St. Paul and Pacific Railroad Company, and did thereupon proceed to construct, complete, and equip, and did fully construct, complete, and equip, the said lines from St. Paul to Watab and from St. Anthony to Breckenridge, except about four miles on the northerly end of said line from St. Paul to Watab, the main line from St. Anthony to Breckenridge having been fully completed to the approval and acceptance of the State of Minnesota and the United States on or about the 25th day of October, A. D. 1871, and that portion from St. Paul to Watab, except four miles on the north end thereof as aforesaid, having been fully completed to the approval and satisfaction of the State of Minnesota and the United States on or about

the first day of December, A. D. 1867; that after the organization of the First Division of the St. Paul and Pacific Railroad Com-
32 pany it owned, operated, and controlled the said road and controlled and managed the land grants appertaining thereto under and by virtue of the act of Congress of March 3, A. D. 1857, and the said act of Congress of March 3, A. D. 1865, and the aforesaid legislation of the State of Minnesota in relation thereto, and that, before any of the foreclosures hereinafter mentioned, the greater part of all the lands granted by the United States as aforesaid to aid in the construction of the lines of road so owned by the said First Division of the St. Paul and Pacific Railroad Company had, under the agreement and legislation hereinbefore mentioned, passed to and become vested in fee simple in the said First Division of the St. Paul and Pacific Railroad Company, and said company had become legally entitled to all of said lands, subject, however, as to the portion of said lines and lands covered by the several deeds of trust hereinafter mentioned, executed before the 6th day of February, A. D. 1864, to the lien of such deeds, respectively; all of which, with the bonds thereby secured, the said First Division of the St. Paul and Pacific Railroad Company assumed and undertook to pay off and discharge.

And your orator further shows that, prior to the organization of the said First Division of the St. Paul and Pacific Railroad Company, an agreement had been made between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Rail-
33 road Company in and by which the said St. Paul and Pacific Railroad Company agreed to relinquish to the said Stillwater and St. Paul Railroad Company that part of the main line of its road between Stillwater and St. Paul, together with the rights, franchises, lands, and privileges pertaining to said portion of said line, which said agreement was filed for record on the 23rd day of February, A. D. 1867, in the office of the secretary of state of the State of Minnesota, and to which, when produced, your orator begs leave to refer for greater certainty; and that afterward, by an act of the Legislature of the State of Minnesota entitled "An act confirming an agreement between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Railroad Company, and authorizing said Stillwater and St. Paul Railroad Company to construct that portion of the main line of said St. Paul and Pacific railroad between Stillwater and St. Paul, and granting lands in aid of the construction of said part of said main line," approved March 4, A. D. 1867, the agreement last aforesaid was assented to and confirmed by and on behalf of said State, and the said St. Paul and Pacific Railroad Company was thereby released from its obligation to construct that portion of its main line so relinquished and from all penalties and forfeitures by reason of the non-construction thereof within the time there-
34 tofore provided by law, and that said Stillwater and St. Paul Railroad Company, a corporation then existing under the laws

Agreement relinquishing part of main line between St. Paul and Stillwater.

State act confirming same.

of the State of Minnesota, should have power to enter upon said line of road between Stillwater and St. Paul, and, if deemed necessary, to relocate the same or change the line for engineering purposes, and to construct, maintain, and perpetually to operate a railroad with one or more tracks, with all necessary side tracks and fixtures, so as to construct the same from some convenient point in the city of Stillwater to the city of St. Paul, and to have all and singular the property, privileges, rights of way, franchises, and rights theretofore held by said St. Paul and Pacific Railroad Company or by said State pertaining to said portion of said main line.

Act of Congress authorizing change of branch line.

And your orator further shows that by an act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3, A. D. 1871, it was provided that the St. Paul and Pacific Railroad Company might so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it might locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railroad, and from St. Cloud to a point of intersection with the line of the original grant at or
35 near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines as was provided for the then existing lines by existing laws: Provided, however, That such change should in no manner enlarge said grant, and that said act should only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases should be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released should be considered as immediately restored to market without further legislation; that the said act of Congress last above mentioned was in accord with the legislation of the State of Minnesota, and that the said St. Paul and Pacific Railroad Company duly accepted the same, and before the 19th day of December, A. D. 1871, did make proper releases of all lands along said abandoned lines, as in said act provided, and did proceed to relocate its said branch line of road from East St. Cloud to St. Vincent as aforesaid, by way of and through the towns of Melrose, Sauk Centre, Alexandria, Fergus Falls, Glyndon, and Crookston to St. Vincent aforesaid, which relocation was made and adopted in the field on and before the 7th day of November, A. D. 1871, and a map thereof, duly certified by the officers of said company, was filed with the Governor of the State of Minne-
36 sota on the day and year last aforesaid, and that said map of the definite location of said branch line of road, duly attested and certified, was filed in the Department of the Secretary of the Interior of the United States on the 18th day of November, A. D. 1871, and that said map of definite location was, on the 20th day of December, 1871, duly approved by the Secretary of the Interior

on behalf of the United States, and was afterwards ratified and confirmed by an act of the Congress of the United States entitled "An act for the extension of the time to the St. Paul and Pacific Railroad Company for the completion of its roads," in and by which it was provided, among other things, that the time for the completion of the railroad from St. Cloud to St. Vincent, in said State, as then located, with the approval of the Secretary of the Interior, be extended for the period of nine months from the time limited by the acts of Congress relating to the same, and said location was also ratified and approved by the legislation of the State of Minnesota hereinafter set forth.

And your orator further shows that by an act of the Legislature of the State of Minnesota, entitled "An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines," approved March 1, A. D. 1877, it was among other things enacted that

State act extending time for completion of roads and providing for relinquishment of lands, etc.

37 the time for the completion of the uncompleted portions of the line of railroad commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, be thereby extended as follows: From Melrose to Sauk Centre, until July 1, A. D. 1878; from Sauk Centre to Alexandria, until January 1, A. D. 1879; from Alexandria to Fergus Falls, and from Crookston to St. Vincent, until January 1, A. D. 1880, and from Fergus Falls to Glyndon until January 1, A. D. 1881; provided, however, that such extensions of time were made subject to all the provisions of this and the succeeding sections of this act, in which it was provided, among other things, that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of the said line of railroad within the times therefor therein limited, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota, without any act or ceremony whatsoever; and that it should be the duty of the Governor forthwith, upon such failure, to enter upon and take possession of, for and in the name of the State, all and singular the portions of the road so remaining uncompleted, and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto; and upon such forfeiture all and singular the lines of road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguish-

38 ment, to be used and regranted for the construction of said line of road; and that none of the lands outside the ten-mile limits, commonly designated indemnity lands, should accrue to any company on account of the construction of any portion of the said line of road extending from St. Cloud to St. Vincent until there should first have been reserved therefrom a sufficient quantity to make up ten full sections for each mile of said line lying between such portion thereof and Melrose; that one-half of all the land up to two hundred thousand acres in quantity, which should be first acquired

on account of the construction of the then uncompleted line of railroad from Watab to Brainerd, or any part thereof, and one-half of all the lands up to four hundred thousand acres which should be first acquired on account of the construction of the then uncompleted line of railroad from Crookston to St. Vincent or any part thereof, by virtue of any grant of lands which had been or should thereafter be made to aid in the construction of said lines of railroad should be reserved and retained by the State, to be used by it for the payment of the claims incurred for work and material furnished in the construction of said lines of railroad; statements of which claims were filed in the State auditor's office in pursuance of an act of the Legislature approved February 21, A. D. 1874; that if any of the lands so reserved should remain undisposed of by the State, after the payment of the claims of the said claimants, they should be conveyed by the Governor to the company which should have completed
39 the portions of railroad to which the lands comprising such residue should appertain; that the land so reserved should be applied to the purposes for which such reservation was made in the manner following: The Governor, attorney general, and railroad commissioner, or any two of them, should, as soon as might conveniently be after the passage of said act, examine into the claims, statements of which had been so filed as aforesaid, and adjust and ascertain the amount remaining owing and unpaid to the parties, respectively, who had filed such claims for work or materials or for both furnished in the construction of said extension lines of railroad, and that they should file in the State auditor's office a compiled statement of the amounts so ascertained by them to be owing and unpaid upon said claims to the said parties, respectively; that in ascertaining the amounts so owing to said claimants that said officers should be empowered to examine witnesses under oath, and that the concurrence of any two of said officers should be sufficient for the determination of the amount remaining owing on any such claims; that if it should be made to appear to said officers that the work or materials embraced in any such claim were furnished by the claimant under a contract with any other of said claimants such fact should be set forth in such statement; that whenever, after the amounts remaining unpaid upon said claims should have been ascertained as therein provided, and any of the lands so re-
40 served should have been patented or otherwise conveyed by the United States to said State, such lands, or so much thereof as might be necessary for such purpose, should be sold by the Governor at public auction, and the net proceeds of all such sales be forthwith distributed ratably by the Governor among said claimants in proportion to the amounts found to remain due and owing upon their respective claims as in said act provided, such notice of the time and place of said sale being first given as the Governor should consider best calculated to inform the public thereof; that such sales should take place from to time, as portions of the lands so reserved should be patented or otherwise conveyed by the United States to the State, until the net proceeds of such sales should have become sufficient to pay such claim in full, or until all such lands should

have been sold; that at any such sale the owner or holder of any such claim might become a purchaser, and should be entitled to be credited upon the sum for which such purchase should be by him made with an amount which should bear the same proportion to the amount ascertained to be owing upon his claim as in said act provided as the total proceeds of the sale at which such purchase should be made should bear to the total amount ascertained to be owing upon all said claims in the aggregate, as thereinbefore provided; that upon the price of any purchase of said lands at such sale being paid or settled, as therein provided, the Governor should execute to such
41 purchaser, his heirs or assigns, a patent for the land so purchased, which should vest in the patentee, his heirs or assigns, the title in fee simple to the lands therein described; that in case it should be ascertained by the Governor, attorney general, and railroad commissioner, as therein provided, that the work or materials for which any of said claims had been filed were furnished under a contract with any other of said claimants, in that case the Governor should so distribute the proceeds of such sales as to prevent payment being more than once made for the same work or materials; that if at any time any of said claimants should receive any payments upon his or their claims from any source other than the proceeds of such lands, such payment should be deducted from the amount of such claim, and such claimant should be entitled to share in the proceeds of said lands only on account of the residue of his claim remaining after such reduction should have been made; that the lands reserved as therein provided should be selected by the Governor, and should be a fair average of the lands acquired from the United States on account of the construction of said uncompleted portions of road; that such selections should be made from time to time, as the lands were acquired from the United States, until three hundred thousand acres in all should have been so selected and set apart; that the St. Paul and Pacific Railroad Company, or any company or corporation taking the benefits of said act should not in any manner, directly or indirectly, acquire or become seized of
42 any right, title, interest, claim, or demand in or to any piece or parcel of land lying and being within the granted or indemnity limits of said branch lines of road to which legal and full title had not been perfected in said St. Paul and Pacific Railroad Company, or their successors or assigns, upon which any person or persons had in good faith settled and made or acquired valuable improvements thereon on or before the passage of said act, or upon any of said lands upon which had been filed any valid pre-emption or homestead filing or entry, not to exceed one hundred and sixty acres to any one actual settler, and the Governor of said State should deed and relinquish to the United States all pieces or parcels of said lands so settled upon by any and all actual settlers as aforesaid, to the end that all such actual settlers might acquire title to the lands upon which they actually resided from the United States as homesteads or otherwise, and upon the acceptance of the provisions of said act by said company it should be deemed by the Governor of said State a relinquishment by said company of all such lands so occupied by all such

actual settlers, and in deeding to the United States such lands the Governor should receive as *prima facie* evidence of actual settlement on said lands the testimony and evidence or copies thereof theretofore or which might be thereafter taken in cases before the local United States land offices and decided in favor of such settlers, and that chapter 117 of the Special Laws of said State for 1876, being an act relative to the construction of a railroad between Breckenridge and Glyndon, and approved March 6, A. D. 1876, and chapter 105 of the Special Laws of said State for 1874, and chapter 49 of the Special Laws of said State for 1875 were thereby repealed.

And your orator further shows that it is informed and be-
43 lieves, and so charges the fact to be, that many of the provisions of the last-named act of the Legislature of Minnesota are *ultra vires* and void, as being in conflict with the provisions of said act of Congress, and in particular the tenth section thereof, and that the said St. Paul and Pacific Railroad Company refused to accept the provisions of said acts and refused to relinquish any lands within the twenty-mile limits of said grant settled upon, occupied, pre-empted, or upon or against which any filing had been made for any homestead, but, on the contrary, protested against the same.

Refusal of company to relinquish lands.

And your orator further shows that in and by an act of the Legislature of the State of Minnesota entitled "An act to amend chapter two hundred and one of the Special Laws of one thousand eight hundred and seventy-seven, entitled 'An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines,'" approved March 9, A. D. 1878, section six of said last-named act was so amended that the time for the completion of the uncompleted portions of the line of railroad extending from St. Cloud to St. Vincent, commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, was extended as follows, to wit: From Melrose to Sauk Center, until August 1, A. D. 1878; from Sauk Center to Alexandria, until December
44 1, A. D. 1878; from Crookston to St. Vincent, until January 1, A. D. 1880; from Alexandria to Fergus Falls, until January 1, A. D. 1880; from Fergus Falls to Glyndon, until January 1, 1881; but that such extensions were made subject to all the provisions of that and the succeeding sections of said act; that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of said line of railroad within the times therefor limited in said act, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota without any act or ceremony whatsoever, and that it should be the duty of the Governor forthwith upon such failure to enter upon and take possession for and in the name of the State all and singular the portions of road so remaining uncompleted and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto, and upon

State act extending time to complete roads.

such forfeiture all and singular the lines of the road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguishment, to be used and re-granted for the construction of said line of road; that neither the St. Paul and Pacific Railroad Company nor any other company accepting or acting under the provisions of said act should be entitled to receive or demand any of the lands granted by the United
45 States to the State of Minnesota to aid in the construction of said line of railroad until that portion of said line of railroad extending from Melrose to Alexandria should be fully completed, with cars running thereon; but that when such portion should be completed, then, and not before, the Governor of the State might convey or certify to the company building such portion not to exceed two hundred thousand acres of said lands, and a further quantity of two hundred thousand acres in case the portion of said line of railroad extending from Crookston to St. Vincent should be also completed, from the lands accruing to said road north of Crookston and not within the indemnity limits: Provided, That nothing should be construed under said act which would waive the right of the State to receive the full grant of ten sections per mile of completed road from the United States; and that when that portion of said line of railroad extending from Alexandria by way of Evansville to Fergus Falls should be fully completed, with cars running thereon, then, and not before, the Governor might convey or certify to said company all the rest, residue, and remainder of the lands granted by the United States to the Territory of Minnesota to aid in the construction of said line of railroad, and that the Governor of the State should be thereby expressly prohibited from conveying or certifying to such railroad company any of said lands otherwise, at other
46 times, in other quantities, or upon other conditions than in said act provided, as above set forth; and that that portion of section nine of said last-named act commencing with the words "and one-half," in the fourth line of said section, and ending with the words "any part thereof," in the eighth line of said section, were struck out, and that the word and figure "three (3)," in the last two lines of said section, were changed and the word and figure "one (1)" inserted in place thereof, so that the lands to be selected and set apart, as specified in said section, should be one hundred thousand acres instead of three hundred thousand acres.

Trust deed or mortgage.

And your orator further shows that the said St. Paul and Pacific Railroad Company, on or about the second day of June, A. D. 1862, did execute and deliver to Edmund Rice, Horace Thompson and Samuel J. Tilden, as trustees, a certain deed of trust or mortgage, bearing date on that day, to secure the payment of bonds duly issued by it to raise means with which to build its road, to the amount of one million two hundred thousand dollars, with interest, of and upon its said line of road from St. Paul by way of St. Anthony to Watab, including all its equipments and appurtenances, tolls, incomes, rents, issues, and profits, and all the railways, ways and rights of way, depot grounds, and other lands; all tracks, bridges,

viaducts, culverts, fences, and other structures; all depots, station-houses, and other appurtenances then held or thereafter to
47 be acquired, and all franchises connected with or relating to said railway, and all corporate franchises, including the franchise to be a corporation, together with all and singular the lands granted as aforesaid by the United States to the Territory of Minnesota by said act of Congress of March 3, A. D. 1857, for the purpose of aiding in the construction of said line of railway from St. Paul by way of St. Anthony to Watab; which said mortgage or trust deed was, soon after its execution, duly recorded in accordance with the laws of the State of Minnesota.

Trust deed or mortgage.

And your orator further shows that on or about the first day of March, A. D. 1864, the said corporation called the First Division of the St. Paul and Pacific Railroad Company duly executed a certain deed of trust, bearing date on that day, to Edmund Rice, Horace Thomson, and Samuel J. Tilden, conveying to them all the right, title, and interest which said last-named company then had or which it should or might thereafter acquire or become entitled to in or to all the sections and parts of sections of land granted as aforesaid to the Territory of Minnesota by the said act of Congress approved March 3, A. D. 1857, and subsequently granted as aforesaid by said Territory and State of Minnesota for the purpose of aiding in the construction of said railroad from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, and in
48 and to the whole of said railroad from St. Anthony to a point in the direction of Big Stone Lake, one hundred and fifty miles from St. Anthony, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of corporate bonds of said company duly issued by it, to the amount of three million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

Trust deed or mortgage.

And your orator further shows that the said First Division of the St. Paul and Pacific Railroad Company afterward and on the first day of October, A. D. 1865, executed a certain other deed of trust, bearing that date, to George L. Becker, Horace Thompson, and George T. M. Davis, conveying all the right, title, and interest which said company then had or which it should or might thereafter acquire or become entitled to in and to all those sections or parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and by said Territory and State granted as aforesaid for the purpose of aiding in the construction of said railroad from St. Paul by way of St. Anthony, Anoka, and St. Cloud to Watab, and also the whole of said railroad from St. Paul
49 via St. Anthony to Watab, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or

belonging to the same, and the tolls, income, rents, issues, and profits thereof, to secure the payment of its corporate bonds duly issued, amounting in the aggregate to two million eight hundred thousand dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

Trust deed or mortgage.

And your orator further shows that the said First Division of the St. Paul and Pacific Railroad Company afterward and on the first day of July, A. D. 1868, duly executed to George L. Becker, Horace Thompson, and Samuel J. Tilden a certain trust deed, bearing date on the day last mentioned, conveying to them all the right, title, and interest which the said company then had or might thereafter acquire or become entitled to in and to all those sections and parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectfully, and by the said Territory and State granted as aforesaid for the purpose of aiding in the construction of the said railroad from St. Anthony to Breckenridge, a distance of two hundred and ten miles (excepting therefrom the lands which said company had acquired or should or might thereafter acquire or become entitled to under the said act of Congress of March 3, A. D.
50 1857, for the construction of that part of said railroad which extends from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, included in the above-mentioned deed of trust to Edmund Rice, Horace Thompson, and Samuel J. Tilden, dated March 1, A. D. 1864), and also the whole of said railroad extending from St. Anthony to Breckenridge, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of the corporate bonds of said company duly issued, to the amount of six million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

Agreement for loan and trust deed.

And your orator further shows that after the alteration and relocation of the branch lines of the road of the said St. Paul and Pacific Railroad Company and the approval thereof by the Secretary of the Interior and by the United States, and on or about the first day of April, A. D. 1871, the said St. Paul and Pacific Railroad Company entered into a certain contract with the said First Division of the St. Paul and Pacific Railroad Company for the construction and equipment of said lines of railroad as so altered and relocated as aforesaid, to wit, from St. Cloud to St. Vincent and from Watab to Brainerd, in and by which said contract it was agreed, among other things, that the
50½ last-mentioned company should loan and advance to said St. Paul and Pacific Railroad Company or for its use and benefit in the construction and equipment of its said lines of railroad the sum of fifteen million dollars in the bonds of said First Division of the St. Paul and Pacific Railroad Company, bearing date April 1,

A. D. 1871, and payable on the first day of January, A. D. 1901, with interest, payable semi-annually, at the rate of seven per centum per annum, and that the said St. Paul and Pacific Railroad Company should assume and secure the payment of said bonds, principal and interest, by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest then held or thereafter to be acquired by the said St. Paul and Pacific Railroad Company in and to the lands granted by Congress as aforesaid to aid in the construction of such lines of railroad; that the said First Division of the St. Paul and Pacific Railroad Company, in pursuance of said contract, did execute and issue its said bonds, with interest coupons annexed, to said amount of fifteen million dollars, all of which were duly negotiated and sold for value; and the said St. Paul and Pacific Railroad Company did execute and deliver its trust deed or mortgage, bearing date on the first day of April, A. D. 1871, to Horace Thompson, George L. Becker, and William G. Moorhead, trustees conveying to them, to secure the payment of the principal and interest of said bonds as the same should become due and payable and upon the terms in said trust deed provided, all and singular the said lines of railroad from St. Cloud to St. Vincent, a distance of about two hundred and ten miles, and from Watab by way of Crow, Wing to Brainerd, a distance of about fifty-five miles, together with the equipments and appurtenances of the said roads respectively and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining or which should or might thereafter thereunto belong or in anywise appertain, and also all the right, title, and interest which said St. Paul and Pacific Railroad Company then had or which it or its successors or assigns should or might at any time thereafter acquire by reason of the constuction of said railroads or of either or of any part of either thereof or otherwise in, to, or concerning the lands which are embraced or intended to be embraced in the said grants of the United States made by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and which had been or should or might be granted or conveyed to the said St. Paul and Pacific Railroad Company, its successors or assigns, to aid in the construction of said lines of railroad or of either or any part thereof; which said deed of trust was soon thereafter duly recorded according to the laws of said State of Minnesota.

Execution of trust deed.

51

52 And your orator further shows that afterwards and before the third day of August, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated October 1st, A. D. 1865, executed to Horace Thompson and others as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and breach of conditions of such trust deed by said Horace Thompson and George T. M.

Foreclosure of trust deed.

Davis, trustees, against the St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, and others, in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court of said Ramsey county by and pursuant to chapter 209 of the Special Laws of Minnesota for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of George T. M. Davis, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the 15th day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made in and by said court and rendered in said cause declaring the amount due on said trust
53 deed of October 1st, A. D. 1865, to be the sum of one million six hundred and seventy-one thousand three hundred and eight dollars and fifty-seven cents, and directing a sale of the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree said property described in said decree, with its appurtenances, was duly sold on the seventh day of May, A. D. 1879, to John S. Barnes, for the benefit of himself, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, for the price and sum of two hundred thousand dollars, which said sale was duly reported to said court and was in all respects confirmed by said court on the 13th day of May, A. D. 1879, and said property, with its appurtenances, was duly conveyed to them accordingly; that thereupon afterwards and on the 23rd day of May, A. D. 1879, the said John S. Barnes, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, pursuant to the provisions of chapter forty-nine of the Laws of Minnesota for the year 1879 and chapter thirty of the General Laws of Minnesota for the year 1876 and the provisions of the charter of the Minnesota and Pacific Railroad Company, duly organized themselves into and became a corporation under and by the name of the Saint Paul, Minneapolis and Manitoba Railway Company, they having duly performed and complied with all the provisions of said acts on their part, and that afterwards the said John S. Barnes, George Stephen,
54 Donald A. Smith, Norman W. Kittson, and James J. Hill duly conveyed all the property embraced in and covered by the said sale to said The St. Paul, Minneapolis and Manitoba Railway Company, and on the 21st day of June, A. D. 1879, the certificate and deed of conveyance of said property to the purchasers thereof was duly filed in the office of the secretary of state of the State of Minnesota, and that ever since that time your orator, the said Saint Paul, Minneapolis and Manitoba Railway Company, has been and still is a railway company existing and acting as such under and by virtue of said organization and the charter of the Minnesota and Pacific Railway Company and the legislation hereinbefore set forth, and that it thereby became vested with all the rights of the St. Paul and

Sale and conveyance to corporators of complainant.

Organization of complainant.

Pacific Railroad Company to the lands, rights, franchises, and other property mentioned in said trust deed so sold and conveyed as aforesaid, with the appurtenances.

Foreclosure of trust deed.

And your orator further shows that afterwards and before the seventh day of May, A. D. 1874, the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated June 2, A. D. 1862, executed to the said Edmund Rice, Horace Thompson, and Samuel J. Tilden, as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the St. Paul and Pacific
55 Railroad Company and the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden; and that afterwards such proceedings were had in said suit in said district court for Ramsey county that, on the thirty-first day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed of June 2, A. D. 1862, to be the sum of one million four hundred and eighty-one thousand five hundred and twelve dollars, and directing a sale of the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of eight hundred and fifty thousand dollars, which said sale was duly reported to and was in all respects confirmed by the said
56 court on the twelfth day of June, A. D. 1879, and that afterwards and on the 21st day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that afterwards and before the seventh day of May, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of March, A. D. 1864, and executed to Edmund Rice, Horace

Foreclosure of trust deed.

Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Ken-
57 nedy was substituted as trustee in said trust deed and as a party plaintiff to said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit, in said district court for Ramsey county, that on the twenty-ninth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed last mentioned, dated March 1, A. D. 1864, to be the sum of two million sixteen thousand nine hundred and seventy-five dollars, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree of the fifth day of June, A. D. 1879, said property described in and by said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of two hundred and fifty thousand dollars; which said sale was reported to and was in all respects confirmed by said court on the seventeenth day of June, A. D. 1879, and that afterwards, on the twenty-first day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator was duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of
58 the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that afterwards and before the third day of August, A. D. 1874, said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of July, A. D. 1868, executed to George L. Becker, Horace Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced by said Horace Thompson and Samuel J. Tilden, as such trustees, the said George L. Becker having been removed from his said trusteeship and no one having been appointed in his place, against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas of the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year

1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the twenty-fourth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit
58½ and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed last mentioned, dated on the first day of July, A. D. 1868, to be the sum of six million nine hundred forty-five thousand three hundred eighty-five dollars and ninety-eight cents, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed in two parcels to your orator, one of the same for the sum of nine hundred thousand dollars, and the other for the sum of four hundred and fifty thousand dollars, which said sales were reported to and were in all respects confirmed by said court on the twelfth day of June, A. D. 1879, and that afterwards and on the twenty-first day of June, A. D. 1879, the certificates of sale and deeds of conveyance of said last-mentioned property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

59 And your orator further shows that Horace Thompson, George L. Becker, and William G. Moorhead, trustees under the said trust deed hereinbefore mentioned, executed by the said St. Paul and Pacific Railroad Company on the first day of April, A. D. 1871, to secure the payment of the bonds therein mentioned, were afterwards duly removed from their trusteeship under the same, and Jacob S. Wetmore, Thomas W. Pearshall, and Thomas Denny were duly appointed their successors and accepted said trust; that thereafter, or on or about the — day of December, A. D. 1875, the said St. Paul and Pacific Railroad Company having made default in the performance of said trust deed and in the payment of the sums of money secured thereunder, a suit was duly instituted on the equity side of the circuit court of the United States for the district of Minnesota by said last-named trustees against the said St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris for the foreclosure of said deed of trust, and for other purposes; that afterwards and at the December term of said court, A. D. 1878, to wit, on the 11th day of April, A. D. 1879, such further proceedings were had in said cause in said court, the said court then and there having jurisdiction of the said

Foreclosure of trust deed.

Decree.

cause and of the parties thereto, that a final decree was rendered in said cause, in and by which it was adjudged and decreed, among other things, that
60 said mortgage or deed of trust was sufficient in form to convey and mortgage all and singular the lines of road, land grants, lands, property, and franchises in said mortgage described as follows, viz: All and singular the line of railroad of the said corporation, The St. Paul and Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of St. Vincent, in the county of Kittson and State of Minnesota; and also all and singular the line of railroad which said defendant corporation, The St. Paul and Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, 1871, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereafter thereunto belong or in anywise appertain; and also all the right, title, and interest which the said defendant, The St. Paul and Pacific Railroad Company, then had or that it or its successors or assigns might at any time afterwards acquire by reason of the construction of said railroads or of either or of any part of either thereof, or otherwise, in, to, or concerning the lands situate, lying, and being
61 in the State of Minnesota, which were embraced or intended to be embraced in the grants aforesaid, or either of them, made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of March 3, A. D. 1857, March 3, A. D. 1865, and March 3, A. D. 1871, respectively, which were granted by said State to said railroad company, or should or might be granted or conveyed to it, its successors or assigns, to aid in the construction of the said line of railroad or of either or of any part of either thereof, including in the premises thereby conveyed the road-beds of the said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings, and materials whatsoever, placed or to be placed on the said railroads, respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools and implements, fuel and materials, for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or either or any part of either thereof, held by the said St. Paul and Pacific Railroad Company or thereafter to be acquired by the same, its
62 successors or assigns; together with all and singular the tenements, hereditaments, and appurtenances to the said rail-

roads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said St. Paul and Pacific Railroad Company in, to, or concerning the same, and each and every part and parcel thereof, with the appurtenances, and that the same, upon the execution and delivery of said deed of trust, became subject to the lien thereof; that there was then due and unpaid upon the said bonded indebtedness the principal sum and amount of fifteen million dollars and the interest thereon from July 1, A. D. 1874, which said principal and interest were a lien upon said mortgage property and franchises, as thereinbefore specially stated; that the defendant, the said First Division of the St. Paul and Pacific Railroad Company, or the defendant, The St. Paul and Pacific Railroad Company, pay the same within five days, and in default thereof that all and singular the said mortgaged property, rights, immunities, and franchises be sold by one of the masters of said court, as one parcel and as an entire property, to the highest and best bidder therefor, but for a price not less than one million five hundred thousand dollars; that the right and equity of redemption of the said defendants in said suit and of all persons claiming by, through, or under them or either of them should be absolutely fore-
63 closed and barred; that, the said sum of money so adjudged due remaining wholly unpaid, the said premises were advertised for sale on the 14th day of June, A. D. 1879, and for want of payment of said sum were on that day duly sold to your orator for the price and sum of one million six hundred thousand dollars, it being the highest and best bidder therefor; whereupon said property so sold was conveyed to your orator; that afterwards and at the June term of said court, A. D. 1879, to wit, on the 21st day of June, A. D. 1879, the master's report of said sale and the certificate or conveyance thereof executed by said master were in all respects confirmed.

Sale and conveyance to complainant.

And your orator further shows that in and by each of said several decrees of the said district court of Ramsey county it was adjudged and decreed that the sale of the mortgaged property therein authorized and directed should be absolute and without redemption and free from any right of redemption under the laws of Minnesota or otherwise.

And your orator further shows that by an act of the Legislature of the State of Minnesota approved March 7, A. D. 1881, and being chapter 412 of the Special Laws of said State for that year, it was enacted and declared, among other things, that the said purchases made by your orator, The St. Paul, Minneapolis and Mani-
64 toba Railway Company, and mentioned in said act, as evidenced by the several instruments of conveyance and transfer duly entered and remaining of record in the office of the secretary of state of the said State of Minnesota, to wit, the several purchases so made of the main and branch lines (so called) formerly owned by the First Division of the St. Paul and Pacific Railroad Company and of the

State act confirming complainant's purchases, organization, etc.

extension line (so called) extending from East St. Cloud to St. Vincent and the international boundary line formerly owned by the St. Paul and Pacific Railroad Company, with the equipments, land grants, land, property, benefits, privileges, immunities, and corporate and other franchises and powers pertaining to said main, branch, and extension lines respectively, as well as the said several instruments of conveyance and transfer and the organization of said St. Paul, Minneapolis and Manitoba Railway Company, were fully ratified and confirmed, and the said St. Paul, Minneapolis and Manitoba Railway Company in the use and enjoyment and in the management, operation, and conduct of the business of said main and branch lines and the land grants and lands appertaining thereto should have, possess, enjoy, and exercise, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the First Division of the St. Paul and Pacific Railroad Company with respect to said main and branch lines, and in the use and enjoyment
65 and in the management, operation, and conduct of the business of said extension line and the lands and land grants appertaining thereto, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the St. Paul and Pacific Railroad Company with respect to said extension line; and in and by said act it was further enacted that any of said instruments of conveyance and transfer might be proved by the record thereof aforesaid, or by a duly certified copy of such record, as well as by the production of the instrument itself, and that said act should be legal evidence of the corporate character and powers of said St. Paul, Minneapolis and Manitoba Railway Company in all courts and places whatsoever, and that said act should take effect and be in force from and after its passage.

Date of completion and length of road.

And your orator further shows that its said road from St. Paul to Sauk Rapids, so acquired as aforesaid, was wholly built and equipped on and before the first day of January, A. D. 1868, in part by the said St. Paul and Pacific Railroad Company and in part by the said First Division of the St. Paul and Pacific Railroad Company, and that that portion of its road between St. Cloud and St. Vincent was fully built, equipped, and put in operation in part by the said St. Paul and Pacific Railroad Company and in part by and under the direc-
66 tion of this honorable court, by and through a receiver duly appointed in a suit pending therein, wherein John S. Kennedy and others were complainants and The St. Paul and Pacific Railroad Company and others were defendants, and was finally completed by your orator, all of which was done, as by law in that behalf required, between the twentieth day of December, A. D. 1871, and the fourth day of December, A. D. 1879, to the acceptance and satisfaction of the State of Minnesota and of the United States, and the completion of said road and branches has been duly and regularly certified by the Governor of Minnesota to the Secretary of the Interior of the United States as to successive sections of the same completed as aforesaid

and as to the whole of said main line and branches; that the number of miles of road so completed and certified is as follows, to wit: From St. Anthony to Breckenridge, two hundred and seven miles; from St. Paul to Sauk Rapids, seventy-seven miles, and from St. Cloud to St. Vincent, three hundred and fifteen miles, for all of which your orator is entitled to have and receive lands so granted as aforesaid at the rate of ten sections per mile for each mile of completed road, except as to thirty-eight miles thereof between St. Paul and Elk River, and for that distance a great quantity of land, equal to every alternate odd-numbered section for six miles on each side of said piece of road, and that over six hundred thousand acres of land so granted as aforesaid remain unpatented to your orator, but to which it is now well entitled in the law.

67 And your orator further shows that by reason of the premises it has become and now is well entitled to all and singular the lands so granted to the Territory and State of Minnesota by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, to aid in the construction of its said road and branches so acquired and built as aforesaid, to wit, the main line, from St. Anthony to Breckenridge, and the branch lines from St. Anthony to Sauk Rapids and from St. Cloud to St. Vincent, and that it has received conveyances of the legal title to a considerable portion of the lands so granted and earned by the construction of said lines of railroad, and has in fact earned by the construction of said lines of railroad and has in fact earned and is well entitled to a conveyance in fee of all the lands so granted as aforesaid, and is the sole beneficial owner of all those so granted for which patents have not been issued to it or to those under whom it claims title as aforesaid; that a very considerable quantity of lands so granted for the purpose aforesaid, both in the place limits of said grant as determined by the line of the location of the road and branches as well as in the indemnity limits of said grant, have not yet been patented or certified to the said State of Minnesota, and have not been patented to your orator, as they in equity and good conscience ought to have been; that the offi-

Complainant entitled to grants of March 3, 1857, and March 6, 1865.

68 cers of the General Land Office, in the Department of the Interior of the United States, under erroneous views of the law and of their duty, have from time to time been permitting the said lands to be entered under various acts of Congress, when in fact and in law the said lands are in nowise subject to entry, sale, and disposal under the same, pretending and claiming at times that said land grant expired December 3, A. D. 1873, and that although the said lands have been fully earned by the building and completion of said railroad and branches under and in pursuance of legislation, both congressional and State, as aforesaid, that said lands are subject to pre-emption and to homestead entry as aforesaid, whereas the legal title to all said lands in the place limits along said railroad and branches and not conveyed by said State is and has been well vested in the State of Minnesota, ever since the definite location of the said road and branches, for the sole

use and benefit of your orator and those under whom it claims, and your orator is now entitled to the legal title thereto.

And your orator further shows that after the definite location of the branch line of its road from St. Cloud to St. Vincent, in said State, which was filed in the Department of the Interior on the 19th day of December, A. D. 1871, the officers of said Department, under the direction of the Secretary of the Interior, prepared a map indicating and showing the ten-mile limits of said grant along
69 said line, and that immediately upon said location and approval the title to all odd-numbered sections within said limits became and was vested in fee simple in the State of Minnesota for the use and benefit of said St. Paul and Pacific Railroad Company, through and under which your orator claims to have and own said odd-numbered sections; that copies of said map indicating said place limits and said odd-numbered sections as aforesaid were immediately thereafter furnished to the officers of the local land offices along said line in the several districts in which said lands were situate, to wit, at Crookston, at Detroit, and at St. Cloud, in the said State of Minnesota; and that by circular letters addressed to said land officers all lands in odd-numbered sections within twenty miles of the line of said definite location were withdrawn from sale or other disposition at said land offices from and after the 15th day of February, A. D. 1871, and that in pursuance of the premises the lands hereinafter described and now claimed to be owned by the said defendant were withdrawn from sale or other disposition, and by reason of the premises aforesaid became and were and now are the property of your orator, and that it was and is well entitled to hold the same in fee simple.

Withdrawal of lands, etc.

And your orator further shows that on or about the 2nd day of September, A. D. 1874, the said Charles
70 Wenzel, whom your orator makes defendant to this its bill of complaint, made application to the local land officers at Crookston to secure the following-described lands, to wit:

Title of defendant.

The northwest quarter of section one (1), in township one hundred and fifty four (154) north, range forty eight (48) west, in the Crookston district and State of Minnesota, under the homestead laws of the United States, and filed in said land office his declaratory statement under said homestead laws, alleging that he had made settlement thereon on the 2nd day of June, A. D. 1874, and subsequently filed proofs of occupancy under said homestead laws for the requisite period, and claimed that said lands should be patented to him; that his said entry and his claim to said land were contested by your orator before said local land officers, and afterwards before the Commissioner of the General Land Office of the United States, and before the Secretary of the Interior, who decided and held against your orator's objections thereto that although said tract was within the ten-mile limits of the grant aforesaid, and although said filing of said Wenzel's declaratory statement was subsequent to the said withdrawal from sale or other disposition of said

lands; that under section three of the act of Congress of April 21, A. D. 1876, his claim therefor was valid and properly allowed, for the reason that the said road for which said grant was so made had not been completed prior to the filing of said declaratory statement, and that the time for the completion of the same provided by the acts of Congress hereinbefore set forth had theretofore expired; but your orator states and submits that its said grant had not expired prior to the date of said alleged settlement or at the time of the filing of said declaratory statement, but that at the time of said alleged
71 settlement and of the filing of the said declaratory statement it remained in full force and effect, and although the tract of land hereinbefore described, at the time of the definite location of said line, had not been reserved by the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or any other purpose whatever, and although the United States had not, by judicial proceedings, legislative act, or otherwise, made any entry or its equivalent by reason or on account of any alleged breach of condition subsequent contained in said grants, the said Secretary of the Interior, for the reasons aforesaid, upon the said declaratory statement of the said Charles Wenzel, and his proofs thereunder, decided and directed that said lands should be patented to the said Charles Wenzel under his alleged entry thereof under the homestead laws; and that a certificate was issued by the said General Land Office to the said Charles Wenzel upon said declaratory statement and proofs for a patent for said lands, and that subsequently and on the 20th day of December, A. D. 1883, a patent from the United States to the said Charles Wenzel was executed in the usual form, purporting to convey the said lands to him in fee simple, under and by virtue of which the said Charles Wenzel
72 claims and pretends to be the lawful owner in fee simple of said lands; that said alleged entry, patent certificate, and patent of said Charles Wenzel are a cloud upon the interest and title of your orator in and to said lands acquired as aforesaid, and that it is well entitled to have the legal title thereto vested in it for its sole use and benefit; that said pretended claim and title of the said Charles Wenzel in and to said lands are inequitable and illegal and tend to the manifest prejudice and injury of your orator, because the legal title to said lands has ever since the definite location of said line of road, on the 19th day of December, A. D. 1871, been vested in the State of Minnesota in trust as aforesaid, and that the said lands were in no way or manner subject to homestead entry at the time said Charles Wenzel settled thereon or filed his said declaratory statement or at any time subsequent thereto; that said lands are now of the value of six thousand ($6,000) dollars, and are situated within six miles of the line of said definite location of said road, along which said road has been long since fully completed and been actually operated for a period of more than six years last past.

To the end, therefore, that said defendant, Charles Wenzel, may, if he can, show why your orator should not have the relief hereby prayed, and that he may make true, full, and perfect answer

73 to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and he thereunto distinctly interrogated, according to the best of his knowledge, information, and belief, but not on oath, the necessity of the answer of the defendant being put in under oath of the said defendant being hereby expressly waived; that the said complainant may be declared and adjudged the full, equitable, and beneficial owner of the said tracts of lands and entitled to have and receive the legal title thereto in fee, and that the said patent so issued to the said Charles Wenzel therefor, and all title or claim of title of the said defendant to said lands under or by virtue thereof may be adjudged and declared invalid and of no effect whatever as against the complainant and its said equitable title to said lands, and that the defendant, Charles Wenzel, and all persons claiming under, by, or through him, may be perpetually enjoined and restrained from setting up, asserting, or attempting to put in force or use any right, title, or interest in or to said land or any part thereof under or by virtue of said patent therefor so issued as aforesaid or of said pretended entry thereof hereinbefore set forth, and that your orator may have such other or further relief in the premises as the nature of the case may require and as to your honors may seem meet and in accordance with equity.

May it please your honors to grant unto your orator the
74 writ of subpœna of the United States of America to be directed to the defendant, Charles Wenzel, commanding him by a certain day and under a certain penalty to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree therein as to your honors shall seem meet and agreeable to equity and good conscience; and your orator will ever pray, etc.

R. B. GALUSHA,
Complainant's Solicitor.

S. U. PINNEY, *Of Counsel.*

Endorsed: "Filed January 4th, 1884. Oscar B. Hillis, clerk."

75 And on the same day, to wit, the 4th day of January, A. D. 1884, an order for a chancery subpœna was entered in the Chancery Rule Register, page 186, said order being in the words and figures following, viz:

Order for Chancery Subpœna. January 4th, 1884.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

The complainant having filed a bill of complaint in this cause on application of R. B. Galusha, solicitor, ordered that a writ of subpœna issue as herein prayed for.

And afterwards, to wit, on the said 4th day of January, 1884, pursuant to the above order, a chancery subpœna was issued out of and under the seal of this court, said subpœna being in the words and figures following, viz:

Chancery Subpœna.

76 UNITED STATES OF AMERICA, *District of Minnesota:*

The President of the United States of America to Charles Wenzel, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of February next, at the city of Saint Paul, then and there to answer the bill of complaint of the Saint Paul, Minneapolis and Manitoba Railway Company, citizens of the State of Minnesota, filed against you on the 4th day of January, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 4th day of January, 1884.

Seal U. S. Circuit Court, Dist. of Minnesota.

Issued at my office, in the city of Saint Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy.*

MEMORANDUM.—The above-named defendant to enter — appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso.*

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy.*

R. B. GALUSHA,
Complainant's Solicitor.

[Endorsed:] No. —. United States circuit court, district of Minnesota. St. Paul, Minneapolis & Manitoba Railway Co. *vs.* Charles Wenzel. Chancery subpœna. Returnable to February rules, 1884. Returned into the clerk's office and filed this 15th day of January, A. D. 1884. Oscar B. Hillis, clerk, by —— ——, deputy. R. B. Galusha, complainant's solicitor.

76*a* UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

I hereby certify that I have served the annexed chancery subpœna on the herein-named defendant, Charles Wenzel, personally, by handing to and leaving with him a true copy thereof at Warren, in said district, on the 12th day of January, 1884.

H. R. DENNY,
U. S. Marshal,
By W. S. WILSON, *Deputy.*

Marshal's fees, $22.30.

77 And afterwards, to wit, on the 4th day of February, A. D. 1884, the following order entering appearance of the defendant was entered of record in the Chancery Rule Register, on page 91, in the words and figures following, viz:

Appearance of Defendant.

1884, February 4th.

ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Complainant,
vs.
CHARLES WENZEL, Defendant.

And now comes the defendant, by C. D. Kerr and R. Reynolds, solicitors, on whose motion is it ordered that the appearance of said defendant be, and the same is hereby, entered.

78 And afterwards, to wit, on the 3rd day of March, A. D. 1884, the answer to the bill of complaint was filed and entered of record in this cause, said answer being in the words and figures following, viz:

Answer.

In the United States Circuit Court for the District of Minnesota.
In Equity.

The answer of Charles Wenzel, the defendant herein, to the bill of complaint of The St. Paul, Minneapolis and Manitoba Railway Company, complainant.

This defendant, now and at all times hereinafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto—

This defendant, answering, saith he has been informed and believes it to be true that by the act of Congress mentioned and entitled in folio two of complainant's said bill a grant of land was made to the Territory of Minnesota for the purposes and under the conditions and with the provisions mentioned and set forth in folio two to twelve, inclusive, of complainant's said bill, except that this defendant avers that there was a further provision in said act of Congress not mentioned or referred to in complainant's said bill—that is to say, and this defendant avers that by section six of said
79 act of Congress it was provided and enacted "That in case any lands on the line of said roads or branches" mentioned in said act "were within any Indian territory no title to the same should accrue, nor should the same be entered upon by the author-

ity of said Territory or State until the Indian title to the same should have been extinguished;" and this defendant for greater certainty, with respect to all the provisions and conditions of said act, craves leave to refer to said act when the same shall be produced.

And this defendant, further answering in that behalf, avers that said land mentioned in complainant's said bill was at the time of the passage of said act of Congress and always prior thereto had been and for more than six years thereafter and until the 5th day of May, A. D. 1884, remained and continued within Indian territory, and was during all said time within the limits and part and parcel of aboriginal unceded Indian territory, and was occupied as such by the Red Lake and Pembina band of the Chippewa tribe or nation of Indians until thereafter ceded by them by treaty with the United States, negotiated at the old crossing of the Red Lake river on the 3rd day of October, 1863, and thereafter ratified and proclaimed by the President of the United States on the 5th day of May, 1864.

This defendant, further answering, admits all that part of complainant's said bill commencing with the words "And your orator further states," in the fourth line of folio 12, on page 2, of said bill, and ending with the words "Approved by the Secretary of the Interior," in the second line of folio 28, on page four of said bill.

And this defendant, further answering, saith he knows not and hath not been informed save by the said complainant's said bill and cannot set forth as to his belief or otherwise whether or not a
80 map of the definite location of the branch line of said Minnesota and Pacific railroad via Anoka, St. Cloud, and Crow Wing to St. Vincent, near the mouth of Pembina river, was duly or otherwise adopted by the said Minnesota and Pacific Railroad Company or at any time filed in the office of the Governor of the Territory of Minnesota or in the General Land Office at Washington, D. C., or whether or not any such map was, on or about the 12th day of November, 1857, or at any other time approved by the Secretary of the Interior; and this defendant avers that if any such map was made or filed or approved as alleged in folio 28 of the complainant's said bill it was so made without any survey or location of said line of railroad upon the ground; and no railroad was ever definitely or otherwise located or constructed by any person or corporation between St. Cloud and St. Vincent upon or near any line so designated or shown upon such alleged map.

This defendant admits all that part of complainant's said bill commencing with the words "And that said company," in the sixth line of folio 28, on page 4 of said bill, and ending with the words "were thereby declared to be public acts," in the first line of folio 74, on page 9 of said bill; but this defendant for greater certainty therein asks leave to refer to said acts and joint resolution of Congress and the acts of the Legislature of the Territory and State of Minnesota, respectively mentioned in said part of said bill, when the same shall be produced.

And this defendant avers that the acceptance by the State of Minnesota of the joint resolution of Congress, referred to in said portion

last aforesaid of complainant's said bill, was duly filed in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., on the 29th day of February, A. D. 1864, and the substitution of the grant to Lake Superior in lieu of the
81 grant from Crow Wing to the navigable waters of the Red River of the North was duly accepted by the said St. Paul and Pacific Railroad Company on the 28th day of May, 1864.

And this defendant further saith he hath been informed, and believes it to be true, that on the 3rd day of March, 1865, an act was passed by the Congress of the United States, entitled "An act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches," approved March 3rd, 1865, but this defendant has never heard or been informed save by complainant's said bill whether said act of Congress was pending in the Congress of the United States on the 2nd day of March, 1865, or not, nor as to whether or not it was then believed by the Legislature of the State of Minnesota that the same would be passed by said United States Congress, nor as to whether or not the State of Minnesota desired or intended to accept the benefit of said act of Congress.

And this defendant has been informed, and believes it to be true, that the general tenor and effect of said act of Congress last aforesaid was as stated in complainant's said bill, from folios 75 to 88 thereof, inclusive; but this defendant, for greater certainty therein, craves leave to refer to the said act when the same shall be produced.

The defendant admits all that part of complainant's said bill commencing with the words "And your orator further shows," on the fifth line of folio 88, on page 10 of said bill, and ending with the words "further legislation," in the 2nd line of folio 109, on page 12 thereof.

And this defendant, further answering complainant's said bill, denies that the said act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March
82 3rd, 1871, was in accord with the legislation of the State of Minnesota, and, on the contrary, avers that by an act of the Legislature of the State of Minnesota, entitled "An act declaring a forfeiture of lands under an act entitled An act to amend the charter of the St. Paul and Pacific Railroad Company, approved March 2nd, 1867," approved March 7th, 1870, it was provided and enacted that the lands appertaining to the said road and extending from Lake Superior to a point at or above St. Cloud should be, and the same were by said act, declared forfeited and lost to the St. Paul & Pacific Railroad Company, and the said lands were by the said act duly granted to the Minneapolis and St. Cloud Railroad Company, and thereupon became and have ever since remained the property of the said Minneapolis and St. Cloud Railroad Company, which is a corporation duly organized and existing under the laws of the State of Minnesota.

And this defendant denies that the St. Paul & Pacific Railroad Company before December 19th, 1881, or at any other time ever made or after said March 7th, 1870, could make releases of all or

any of the lands along the line from St. Cloud to Lake Superior aforesaid, so that the same could "be restored to market without further legislation" or otherwise.

This defendant admits all that part of complainant's said bill commencing with the words "and did proceed," in the fifth line of folio 109 on page 12, and down to and including the words "on behalf of the United States," in the 2nd line of folio 111 on said page 12 of said bill.

This defendant denies that the said relocation of said road mentioned in folio 110 of said bill was ever satisfied or confirmed by the Congress of the United States; and this defendant, further answering, avers in that behalf that said relocation of said line from East St. Cloud to St. Vincent, as set forth in folios 109 and 110 of said bill, was not in accordance with the said act of Congress of March 3, 1871, in this that it did not connect with the line of the original grant at or near Otter Tail or Rush Lake, nor at any other points, nor did it run at any place within twenty-five miles of said original line.

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This defendant says that he is informed, and believes it to be true, that the act of the Legislature of the State of Minnesota entitled "An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines, approved March 1st, 1877," and the act of said Legislature entitled "An act to amend chapter 201 of the Special Laws of 1877, approved March 9th, 1878," which acts are referred to in folios 112 and 131, respectively, of the complainant's said bill, were duly passed by the Legislature, as in the complainant's bill alleged, and that the provisions of the said acts were of the tenor and effect set forth and stated in the complainant's said bill; but this defendant, for greater certainty therein, asks leave to refer to the said acts, respectively, when the same shall be produced; and this defendant denies that any of the provisions of said acts or either of them were or are *ultra vires* or void or in conflict with the provisions of an act of Congress; and this defendant is not informed and does not know and cannot state whether the St. Paul and Pacific Railroad Company refused to accept the provisions of said acts or refused to relinquish any lands thereunder or not, nor as to whether or not said company protested against said acts.

And this defendant, further answering, says that he knows not and has not been informed save by the complainant's said bill and cannot set forth as to his belief or otherwise whether or not any of the allegations of complainant's said bill are true, commencing with the words "And your orator further shows," in the 6th line of folio 139 on page 15, and down to and including the words "it is now well entitled in the law," in the 3rd line of folio 202 on page 22 of said bill.

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And as to all that portion of the complainant's said bill last aforesaid this defendant says that he has not knowledge or information sufficient to form a belief, except this defendant avers that complainant's said road from Glyndon to St. Vincent and opposite to the land described in the complainant's said bill was not built or

constructed on or near the line of said road as definitely located according to the map of such location, and on many points on its said line as constructed it was and is more than ten miles from such line of definite location.

This defendant denies that all that part of complainant's said bill commencing with the words "And your orator further shows," in the fifth line of folio 202, on page 22 thereof, and down to and including the words "to the legal title thereto," in the first line of folio 207, on page 23 of said bill.

This defendant, further answering, saith that he does not know and hath not been informed and cannot set forth as to his belief or otherwise whether or not any allegation of the complainant's said bill is true from and including the words "And your orator further shows," in the 2nd line of folio 207, on page 23, down to the words "And your orator further shows," in the first line of folio 212, on said page 23.

This defendant further shows, by way of defense to said bill, that by an act of the Congress of the United States, entitled "An act to amend the act of March 3rd, 1873, entitled 'An act for the
85 extension of time to the St. Paul and Pacific Railroad Company for the completion of its roads,'" approved June 22nd, 1874, it was provided and enacted that the time for the completion of the St. Paul and Pacific railroad should be extended until March 3rd, 1876, and no longer, upon the following conditions: That all rights of actual settlers and their grantees who had theretofore in good faith entered upon and actually resided on any of the lands covered by the grant for said railroad prior to the passage of said act, or who otherwise had legal rights in any of said lands, should be entitled to the lands so settled on in all respects the same as if the same had never been granted to aid in the construction of said lines of road.

This defendant, further answering, saith that by section three of the act of Congress of the United States, entitled "An act to confirm pre-emption and homestead entries of public lands within the limits of the railroad grants in cases where such entries have been made under the regulations of the Land Department," approved April 21,
8 76, it was provided and enacted that all pre-emption and homestead entries which had theretofore been made by permission of the Land Department of the United States or in pursuance of the rules and instructions thereof within the limits of any land grant, at a time subsequent to the expiration of such grant, should be deemed valid, and a compliance with the laws and the making of the proof required should entitle the holder of such claim to a patent therefor.

And this defendant avers that the time limited by the acts of Congress for the completion of said road from Glyndon to St. Vincent aforesaid, and opposite to and past the land described in complainant's bill herein, expired on the 3rd day of December, 1883, and that at the time of the passage of the said act of Congress last aforesaid, to wit, April 21, 1876, the said railroad had not
86 been completed or constructed past or to a point opposite to the land described in complainant's said bill.

Further answering, defendant avers that on the 2nd day of June, 1874, he had duly, in accordance with the naturalization laws of the United States, declared his intention to become a citizen of the United States, and was the head of a family, and was not the owner of three hundred and twenty acres of land in any State or Territory, and had never had the benefit of the pre-emption laws of the United States, and so being fully qualified as a pre-emptor under the laws of the United States, he, this defendant, in good faith made settlement in person as a pre-emptor on the said lands so described in complainant's bill on said June 2nd, 1874, and that he did not remove from land of his own in this State to make such settlement, and ever thereafter until the present time he has continuously resided and still resides thereon.

That by permission of and pursuant to and under the instructions of the Land Department of the United States this defendant duly made and filed his declaratory statement No. 1186 for said land at the United States land office of the district in which said land is situated, at Detroit, Minnesota, which said declaratory statement was by the register and receiver of said office accepted and approved, and that from said June 2nd, 1874, to the present time he has fully complied with all the requirements of the land laws of the United States to entitle him to have and hold the land described in the bill herein as against the complainant and all the world.

This defendant admits all that part of complainant's said bill commencing with the words "And your orator further shows," in the first line of folio 212, on page 23, and down to and including the words "acquired as aforesaid," in the 6th line of folio 219, on page 25 of said bill, except that this
87 defendant avers that his settlement upon said land and his acquisition of title thereto were under the pre-emption laws and not under the homestead laws of the United States, and except, further, that this defendant has not been enlightened further as to the reasons of the honorable Secretary of the Interior of the United — for dividing and directing that said land should be patented to this defendant.

This defendant denies that said complainant is entitled to have the legal title to said land vested in it, and denies that the title or claim of title of this defendant is inequitable or illegal, and denies that when said settlement was made on said land by this defendant as aforesaid the legal title thereto was or at any time since has been vested in the State of Minnesota in trust or otherwise, and avers that said land was subject to pre-emption under the laws of the United States at the time defendant settled thereon as aforesaid.

Defendant admits that said land is now of the value stated in said complainant's said bill, and avers that the improvements made and placed thereon by this defendant are of the value of fifteen hundred dollars in addition to said alleged value of said land.

This defendant admits that the said land is situated within six miles of said road and admits that said road has been operated past said land since 1879 and no longer.

And this defendant denies all and all manner of unlawful com-

bination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant.

88 All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Dated March 3rd, 1884.

CHAS. D. KERR,
R. REYNOLDS,
Solicitors for Defendant.

JAMES B. BEALS, *Of Counsel.*

Endorsed: "Filed March 3rd, 1884. Oscar B. Hillis, clerk."

89 And afterwards, to wit, on the 13th day of March, A. D. 1884, the replication to the answer of the defendant was filed, said replication being in the words and figures following, viz:

Replication.

Circuit Court of the United States for the District of Minnesota.

The replication of The Saint Paul, Minneapolis and Manitoba Railway Company, complainant, to the answer of Charles Wenzel, defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

R. B. GALUSHA,
Solicitor for Complainant.

Endorsed: "Filed March 13, 1884. Oscar B. Hillis, clerk."

89½ And afterwards, to wit, on the 3rd day of May, A. D. 1884, the parties hereto filed a stipulation in the words and figures following:

Stipulation.

Circuit Court of the United States for the District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.
} In Equity.

Aside from the facts conceded by the parties by their bill and answer in this suit, the following further admissions are made, and as to all matter in issue and not admitted by the pleadings or by this stipulation, either party may take such proofs as they or it may think fit before the next June term of the court. Either party may produce in evidence at the hearing such documentary evidence as they or it may choose. Oral evidence is to be taken on reasonable notice before any commissioner of the court:

First. It is admitted that the premises in question were within the Indian Territory when the act of Congress of March 3, 1857, took effect, and the Indian title thereto was extinguished by treaty made October 3, 1863, afterwards ratified by the Senate of the United States on the — day of ——, and proclaimed by the President May 5, 1864.

Second. That the St. Paul & Pacific Railroad Company assented to the joint resolution of Congress of July 12, 1862, and the acts of the State Legislature of Minnesota of March 6, 1863, and March 4, 1864, by resolution on the 28th day of May, 1864, adopted by its directors.

Third. Upon the question of conformity of the location of the branch line of road from St. Cloud to St. Vincent with the act of March 3, 1871, and of the conformity of the constructed line of road with such located line, it is agreed that either party may read at the hearing any testimony now on file in this court in the case of The Northern Pacific Railroad Company *v.* The St. Paul & Pacific Railroad Company *et al.*, and complainant may also read in evidence the testimony of Henry T. Wells in said cause.

89¾

Fourth. All the allegations of the bill commencing in the sixth line of folio 139 with the words "And your orator" down to and including the words "three hundred and fifteen miles," in the fourth line of folio 201, are admitted.

Fifth. Opposite the lands in question the road as constructed is on a line two and one-half miles east of the said located line.

Sixth. It is admitted as to the matter of fact alleged in the bill from folio 207 to the words "15th day of February, A. D. 1872," in the third line of folio 210, that the same are true as therein stated, leaving the court to determine whether the title passed as therein alleged.

Seventh. The passage of the act of Congress of June 22, 1874, mentioned in the answer, is admitted to be produced and referred to at the hearing, and also the act of Congress of April 21, 1876.

* * * * * * *

Ninth. The certified papers as to the pre-emption of defendant and papers relating thereto from the Commissioner of the General Land Office, certified June 30, 1883, are to be produced at the hearing by complainant and to be put in evidence, and the patent issued to said defendant, Charles W. Greenhalgh, shall be produced and put in evidence.

Tenth. It is admitted that the lands in question are within six miles of the line of definite location of the branch road——*

90 And afterwards, to wit, on the 5th day of August, A. D. 1884, the depositions of J. J. Hill and C. J. A. Morris, on behalf of the complainant, were filed of record in this cause, said depositions being in the words and figures following, viz:

Depositions of J. J. Hill and C. J. A. Morris, Taken on Behalf of Complainant.

United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES WENZEL.

Depositions of James J. Hill and C. J. A. Morris, witnesses of lawful age, produced, sworn, and examined before Oscar B. Hillis, clerk of said court, on behalf of the complainant, commencing at 10 o'clock in the forenoon, on the 3rd day of June, A. D. 1884, at his office, in the United States custom-house, in the city of St. Paul, in said district.

Present: R. B. Galusha, solicitor for complainant; James B. Beals, solicitor for defendant.

JAMES J. HILL, sworn on behalf of complainant, testifies as follows:

Direct examination.

Questions by Mr. GALUSHA:

1 Q. You are the president of the complainant in these two actions?

A. Yes, sir.

91 2 Q. How long have you resided in the State?

A. Nearly 28 years.

3 Q. What was your business during the years 1871 and '72 and for some years prior to that?

A. I was engaged at that time in the transportation business.

4 Q. From St. Paul to Winnepeg down the Red River?

A. Yes, sir.

Q. 5. Are you familiar with the country in the Red River Valley commencing at Glyndon and from there north to St. Vincent?

A. Yes, sir.

* Copy incomplete.

6 Q. State your general familiarity with the country there; how long and to what extent.

A. From 1870 up to the present time I have been over the country a great deal. My business in the transportation of freight on wagons to such points on the river as we could run the boats to, from Winnepeg in low water, made me very familiar with the country south of Grand Forks. There were times in low water when we couldn't run a steamboat south of Grand Forks, and we had to transport freight as best we could and look out our routes. I was familiar with the entire valley from traveling over it, both on horseback and on foot and by wagon. I used to think I was very well posted around the entire valley, and I think I am now.

7 Q. Are you familiar with the originally located line of the St. Paul and Pacific Railway Co.—St. Vincent Extension?

A. I was in the valley when the engineers came there and knew the location at the time.

8 Q. From Glyndon as far north as Argyle on the road?

A. I was present the day they arrived there.

9 Q. You are also familiar with the line upon which the road was located in 1872 and upon which it is now constructed?

A. Yes, sir.

92 10 Q. State the character of the country through which the originally located line was laid—that is, between the points I have just named, Glyndon and as far north as Argyle.

A. There were several large swamps and districts of marsh on the original location. Some of them were more than a township in extent. The line, as I remember, was located on the west of the center of those marshes. The year the line was located was the dryest season I have ever known in the Red River Valley. The river ever since that time has been navigable for steamboats to Moorhead; but that year with the lightest draft boat we had it was very difficult to go beyond the mouth of Two Rivers. That is about 20 miles south of the international boundary line. We did, however, go to Grand Forks by putting in teams and taking a long time to make a trip. I remember once of taking fourteen days in making a trip which could be made in four days. I speak of this to show that the season was an unusually dry one.

11 Q. These swamps and marshes over which the originally located line were laid were then comparatively dry?

A. They were dryer than they have been since. I have been over some of them since—that is, I have been to them, and they were entirely impassable. It was impossible to go through them on foot.

12 Q. That has been the case ever since 1872?

A. Yes, sir. Ever since then some of them have been largely drained, and they are still very wet.

13 Q. The winter of 1871 and '72 and the spring of 1872 were unusually wet, were they not?

A. I do not remember.

Q. 14. Were you up there the spring of 1872?

A. Yes, sir. That spring there was very high water, but I do not know as to the winter.

93 15 Q. How was this located line of 1871 in the spring of 1872 as to being passable or not?

A. There were portions of the line you couldn't get to without a boat; couldn't get closer than five miles.

16 Q. It was a long distance under water?

A. Yes, sir. Part of the line couldn't be reached nearer than 5 to 8 miles without a boat. Portions of the line were dry or comparatively dry—were situated between these marshes. It might be said to be as dry as portions of the line upon which the road was finally built, but these portions were comparatively small—these dry portions comparatively small as compared to the whole distance.

17 Q. Give the reasons, if any, for making it necessary to change the originally located line of 1871 to the present line, which was located in 1872.

A. I was not connected with the road at that time, and can only give as a reason that they could not build a road there, and if they had built it they couldn't get to it unless they had got to it in boats. The line that was built skirts the eastern edge of these swamps. In some cases the back water from these swamps has since overflowed the road so as to make it impassable in the spring. It either had to be built as far east as it was built or it had to be built further west than the original location.

18 Q. The line as located in 1872 was as far west as a practicable route could be built without going very close to the Red River north?

A. It would be necessary to go close enough to the bank of the Red River to get the benefit of the drainage from gulleys making down to the river. We have since built a line from Moorhead on the bank of the river, and I am very familiar with the profile of the country. The present line from Moorhead north is located

94 not far from where any road should be built on the west of these swamps.

19 Q. And west of the present line?

A. Yes, sir.

20 Q. Could materials for grading and embankments of a railroad been obtained to any advantage west of the present line without going to the bank of the Red River?

A. During the dryest part of the season materials might have been got for portions of the distance alongside the location, but through the marsh part of the distance no material could be got near the line of the road. In fact, the road couldn't be built there. It was a physical impossibility, unless you built it on piles. It could not have been reached, if built on the original line, by settlers, and adjacent to the line of the east side.

21 Q. State whether or not the present location is better as regards the accommodation of settlers and the business along the line than if built on the original location, and for what reasons.

A. The present location serves all the country in the Red River Valley east of the line, where the largest portions of lands fit for

settlement are located, except along the immediate bank of the Red River.

22 Q. State whether or not the present constructed line is the most practicable and shortest route available for building a road through the valley between the points I have first named?

A. It is the most practicable and serves the greatest number of people. From Glyndon north it would be the shortest practicable route.

23 Q. State from your knowledge of the constructed lines in the Red River Valley between the points above named as to whether there were any settlers along either the line of 1871 or the line of 1872 at that time in the years 1871 and '72; and, if so, to what extent.

95 A. If there were any settlers at all along the line it would have been Haney, near where Fisher's Landing now is. There was not more than three or four settlers along the entire line and they were at the crossing of the Red Lake river, and I am sure that they were settled at that point before the spring of 1872. I think they went in the spring of 1872, or possibly after the line was located across the Red Lake river in the fall. These men worked for us and I knew where they went. They were freighters. I think they went up and settled at what I suppose was the crossing of the Red Lake river in the fall of 1871 and spring of 1872, and except these men there were no other settlers along the line between Glyndon and St. Vincent.

24 Q. As far as these settlers were concerned the present location was the best line for them?

A. I do not know what has become of them. There is a railway there. Fisher's Landing is there. The present location would not be any better for them than to have it by the way of Crookston. It couldn't be built there.

96 Cross-examination.

Questions by Mr. BEALS:

1 Q. This line spoken of by Mr. Galusha is what you call the branch line of the St. Vincent Extension?

A. Yes, sir.

2 Q. Where does this location of 1871 commence—of the St. Vincent Extension?

A. The St. Vincent Extension commences at St. Cloud.

3 Q. The changes that you have spoken of as between the located line of 1871 and the located line of 1872 are between Glyndon and Argyle?

A. Yes; between Glyndon and St. Vincent and Argyle.

4 Q. You haven't, in your direct examination, spoken of any changes between St. Cloud and Glyndon?

A. No; there were no changes between St. Cloud and Glyndon.

5 Q. Are you familiar with the located line of 1871 between St. Cloud and Glyndon?

A. Yes, sir.

6 Q. How far from the constructed line was that located line of 1871 between St. Cloud and Glyndon?

A. The constructed line by act of the State Legislature was directed to run through Fergus Falls. The original location ran by way of Dayton—I think about 6 miles from the location at Fergus Falls.

7 Q. Do you know which side of Otter Tail and Rush Lake the located line of 1871 ran?

A. It ran west of those locations.

8 Q. What was the reason for the change in the line as made between St. Cloud and Glyndon?

A. The location through Fergus Falls was made by an act of the Legislature of the State of Minnesota.

9 Q. That was the only reason for the change between St. Cloud and Glendon—to bring it to Fergus Falls in accordance
97 with the act of the Legislature you speak of? There was no difficulties in the route as laid down?

A. No insurmountable difficulties.

10 Q. Is this line of 1871 what they call the Sheppard line?

A. No, sir.

11 Q. What location was that?

A. The line of 1871.

12 Q. The Sheppard location I call it?

A. I am not familiar with that.

13 Q. How far back were you personally familiar with the country through which this original line of 1871 ran?

A. From 20 to 30 miles.

14 Q. How far did these marshes extend on either side of this located line of 1871?

A. The marshes were principally west of the line of 1871—that is, the principal portion of the marshes lay east of the line of 1871. The line located in 1871 ran through the western portion of these marshes as a rule—that is, when I speak of marshes I mean these impassable ones.

15 Q. By whom was that line of 1871 located?

A. It was located by Mr. Morris and Mr. Galloway.

16 Q. The line as constructed then was finally constructed upon the eastern edge of these marshes, as shown by this map, was it?

A. Yes, sir; the line as constructed was constructed as near the first location as possible to make it on solid ground without going west of it.

17 Q. The line as located according to this map referred to runs near the western edge of these marshes, does it not?

A. Yes, sir.

18 Q. The change was made from the western edge to the eastern edge of the marshes?

A. Yes, sir.

19 Q. The material for the construction of the line could
98 be better found on the eastern edge of these marshes than on the western edge?

A. It was dryer ground and better grade.

20 Q. Could better ground be found where the line was con-

structed finally than between the located line of 1871 and the Red River?

A. A good line for construction could be found close to the bank of the Red River.

21 Q. When you say close do you mean upon the adjoining section?

A. I mean from within one to three miles.

22 Q. That would be the entire distance a good line could be located?

A. Substantially that—as you go north.

23 Q. The line as originally located in 1871 didn't run onto these marshes you speak of, did it?

A. Yes, sir. There is not so much of it swamp land as there is farther north and farther south, but a wet country that cannot be traveled over for a greater portion of the year by teams.

Redirect examination.

Questions by Mr. GALUSHA:

1 Q. These swamps there, which you have stated the line was located over the western portion, extended for some distance west of the located line of 1871?

A. Yes, sir; in places.

2 Q. This wet, marshy country you have spoken of extended for a good portion of the whole distance over the line of 1871, as far north as Argyle?

A. The line of 1871 was located mainly through the wettest portion of the east side of the Red River Valley for the entire dis-
99 tance—that is, taking the entire distance from Glyndon to Argyle. A great deal of that land is the very wettest part of the valley.

3 Q. Notwithstanding the extent of drainage made over these lands since that time, it would still be unfit to build a railroad over?

A. It would be impossible unless large portions of it was built on piles. Some of these lands are so wet that we have been unable to drain them even yet.

Recross-examination.

Questions by Mr. BEALS:

1 Q. Are these marshes over the line as finally constructed principally near Beltrami?

A. Some. At Beltrami the line skirts the edge of a very large marsh for a short distance.

2 Q. One of the principal marshes the road actually crosses on the road as constructed?

A. At Beltrami.

3 Q. And also near Kittson?

A. There is a small one near Kittson, but that one was drained.

4 Q. How was it between Wakeman and Euclid as finally constructed?

A. That is a very good line.

Re-redirect examination.

Questions by Mr. GALUSHA:

1 Q. In order to drain the section of the country west of Euclid and Angus through which the original line ran was it not necessary to build a large canal?

A. Yes, sir; there is a canal there 22 miles long, something over twenty feet wide, and six feet deep.

2 Q. State in regard to the character of this country as to the lack of drainage, and when the water once stood upon — how it ran off, if at all; also the character of the swamps running through it.

100

A. The entire east side of the Red River Valley east of the constructed line is more or less drained by natural water-ways. The country is very level with a natural fall towards the Red River for the greater distance. The surface water lies in pools or runs slowly over the surface into these sluggish streams, and many of these streams lose their definite character and spread all over the surface of the country—are what they call lost. They run all over the surface of the country and form these marshes and keep them wet through the entire summer. This water lays there unless evaporated by the sun in very dry seasons, when there are no rainfalls to bring up the supply.

3 Q. The natural drainage is insufficient to keep those parts of the country dry?

A. The drainage of the country is insufficient not only for the maintenance of a railroad, but for the ordinary purposes of travel and cultivation. There is hardly a township but has ditches to carry off the water.

Re-recross-examination.

Questions by Mr. BEALS:

1 Q. This description you have given of the part of the country through which the line actually runs—does it apply to the country between the western edge of the marsh and the Red River?

A. These marshes are, as we suppose, and in fact our explorations show are deeper and wider towards the centre, and on the western edge the same condition prevails as on the eastern edge, except that there is more water to take care of and in finding its way, if at all, through the little sluggish sloughs towards the Red River, immediately near the banks of the Red River, more ravines are formed, and to that extent it is better drained within one to three miles of the Red River.

101

2 Q. It is even then, and a better country to build a railroad than to the east of these marshes within that distance of the Red River?

A. On the bank of the Red River, yes, sir; and as good, but

only for part of the way. The canal runs from a point directly west of Warren and a point 22 miles southeast of Warren and across the line of the 1871 location.

Witness excused.

102 C. J. A. MORRIS, sworn on behalf of complainant, testifies as follows:

Direct examination.

Questions by Mr. GALUSHA:

1 Q. You reside in St. Paul?
A. Yes, sir.
2 Q. How long have you lived in the State?
A. Since the spring of 1857.
3 Q. What is your business?
A. Civil engineer.
4 Q. From what length of time?
A. Commencing in the year 1864 or 1865.
5 Q. 20 years nearly?
A. About 20 years.
6 Q. You have been actively engaged in the business during all that time?
A. Yes, sir.
7 Q. Were you employed during the years 1871 and 1872 by the St. Paul and Pacific Railroad Company in the location and construction of the St. Vincent Extension of that line? If so, to what extent?
A. I was; in 1871. I was first assistant to Mr. R. B. Galloway, who had charge of this location in 1871—the location of the line there a few miles northwest of Fergus Falls to St. Vincent; and in 1872 I had charge of the location and construction of the line from Glyndon to St. Vincent. I did all of the instrumental work in running the line of 1871, as what is known as "transitman." In 1872 I was in full charge to select the location and see that it was properly staked out and located.
8 Q. What was the character of the season of 1871 during the time you was running the line from Glyndon north?
A. It was very dry.
9 Q. An unusually dry season?
103 A. Yes, sir; it was. We had great difficulty in finding water to supply common necessities.
10 Q. On returning to the line in the spring of 1872, how did you find the line you had located the fall previous?
A. I found large portions of it under water—impassable.
11 Q. Go on and describe the general character of the line.
A. In the line located in 1871 there was along there a country that seemed to be very flat and without any general drainage. There were places where the grass was very long and rank, showing that in wet weather the country would be very wet. In 1872 when we went out there again we found this country all under water, so

that it became necessary to try to find a different locality to build the road. The men's instructions were to try and find a locality where the ground was better drained and keep away from these marshes. In exploring the country on horseback and otherwise I was satisfied that the best ground could be obtained on the east side of these marshes in the wet land, and finally made my location accordingly.

12 Q. In locating the line of 1872, upon which the road is now constructed, the location was made at the fartherest westerly point upon which you could now get a good road-bed?

A. Yes, sir; we tried, of course, to keep the general direction of the road as near as possible in a direct line, and we are now just on the easterly edge of the largest marsh at or near Beltrami. In running this line of 1872 I ran a second time into this same marsh and was obliged to go back down the line some 12 or 15 miles and make a swing in it still further to the east so as to get out of the locality where this marsh was and get on solid ground. I found the marsh in 1872. I had no boat to get over it, but we waded into it and found eight, ten, or twelve feet of water, and I explored it
104 westerly from the line of 1872 almost down to where I thought the line of 1871 was and found no break between the two localities that we could get through with the line.

13 Q. Upon the line as located in 1871 it would have been impracticable to have constructed a railroad for lack of material?

A. Yes, sir; it would have been impracticable. There would be miles there that in an ordinary season would be under water, and the materials would have to be hauled a great distance, and the road-bed would have to be on stilts.

14 Q. And it has been so ever since?

A. As far as I know.

15 Q. Would it have been very difficult to obtain materials for embankments or ballasting the road?

A. It would have been impossible to obtain them. They would have to be carried long distances.

16 Q. This would apply to the original location between Glyndon and Argyle?

A. Yes, sir. There was some more marshes and swampy country north of Red Lake river, but I have forgotten exactly where they were.

Q. 17. A change of location was made merely for engineering reasons?

A. Yes, sir.

Q. 20. In order to drain the section of the country west of Euclid and Angus, through which the original line ran, was it not necessary to build a large canal?

A. To my own personal knowledge, I cannot swear to that.

Q. 21. The change made necessary in the spring of 1872 by reason of this high water in marshes and swamps, commencing about 12 miles north of Glyndon, controlled, to some extent, the crossing of the Red Lake river, did it not?

A. Somewhat; yes, sir.

105 Q. 22. Did you assist in locating the crossing of the Red Lake river in 1872?

A. Yes, sir.

Q. 23. You made the location yourself?

A. Yes, sir.

Q. 24. State the causes and reasons you had for making the location of the crossing of the Red Lake river at the present point.

A. Where I first struck the river the valley was very wide and the banks were very high, and it necessitated a very long and high bridge and a very costly one. My object was to find a place where it was most easy to cross, where the immediate water-way of the river could be easily approached, of reasonable grade, and that the bridge itself would be as short as possible. With that object in view I explored the river on either side of the place where I first struck it with the line for a distance of, I suppose, four or five miles, and finally found this particular place where the line is now constructed. The advantage in the place consisted of there being two ravines leading down from the high line of prairie on either side of the lowland of the valley below, which enabled us to carry the grade line of our proposed road down to a moderate level above the surface of the water and in that way save the handling of large amounts of material and the construction of a high, long, and expensive bridge. The point I selected for the crossing was undoubtedly the very best point in that locality within a distance of five or six miles either side. I spent some two weeks there examining the river very carefully, and ran lines across it a number of different places. That point was the fartherest east upon which I could obtain a good location for the bridge.

Q. 25. Were there many settlers along the line as located in 1871 or 1872 at the time of the location?

A. There was none at all.

26 Q. State as to whether the line as located in 1871 could have accommodated the business of the people who settled in the
106 valley after the location of the line; if not, give the reasons.

A. I do not think it would, because these large districts that were overflowed—any settlers easterly or westerly of them would have to go a long distance to get to the railroad. There would be miles there that the road would be unapproachable.

27 Q. They would have to reach the railroad by boats?

A. Yes, sir; they would.

28 Q. In this respect how was the line as located in 1872?

A. There is no place on the line of 1872 that they would have to go any great distance to get to the road except in the neighborhood of the south branch of the Wild Rice river (since drained to a great extent), and that would be one, two, or three miles.

29 Q. And for the business interests of the public and of the settlers along the line of the road the present located line is the best and most practicable route?

A. That is my opinion; yes, sir.

30 Q. If the line had been located immediately along the bank

of the Red River could it have been reached at all by the settlers in the valley east of these large swamps you speak of?

A. No, sir; not without going around the swamps.

31 Q. It would have been almost useless for the purpose of a railroad for these people living in the eastern part of the valley?

A. They couldn't use it at all.

107 Cross-examination.

Questions by Mr. BEALS:

1 Q. In making your crossing of the Red Lake river did you change, in order to get the crossing as you finally made it, the location of your 1872 line south of the river? How far back did you change it?

A. The first line I ran was straight out from Beltrami and struck the river in here (indicating), about three miles east of this present location.

2 Q. You changed it back how far?

A. I changed it westerly three and a half miles.

3 Q. You went back in order to make that change how far south?

A. I went back about 12 miles.

4 Q. And you finally crossed the river three and a half miles west from where you first struck it?

A. Yes, sir.

5 Q. Now, this 1871 location—you say you were on the ground when that was made?

A. Yes, sir.

6 Q. How was that location made; was it actually locating the ground for the railroad?

A. Yes, sir; the line was surveyed out in the usual way.

7 Q. How far apart were the stakes driven on that line?

A. 200 feet.

8 Q. That line was actually staked out on the ground?

A. Yes, sir.

9 Q. How great marshes did you find which you couldn't on that line actually stake out?

A. My recollection is that it was nearly all staked out. Occasionally we might strike a place where the water was so deep you couldn't set up a stake. We used four-foot laths to stake with, and any place where a four-foot lath wouldn't stand up in we didn't stake.

108 11 Q. What character of stakes did you use on the line that was located in 1872?

A. In 1872 we used laths and shingles quite extensively—the same general character as used on the 1871 line.

12 Q. Then you don't remember of having any particular difficulty in actually locating the 1871 line?

A. No; only as I say there were districts we went through that I noticed this rank tall grass.

13 Q. Was there different kinds of grass over the line as located

in 1872 from the line of 1871; what was the difference in the vegetation; how great an extent was the difference?

A. A very great extent. The general character of the country on the line of 1872 is higher and dryer and better drained than in 1871, and the only part of the 1872 line where we passed through any seriously wet country was in the neighborhood of the South Branch of the Wild Rice river.

14 Q. What month was the location made on the 1871 line?

A. My recollection is that we started on the 9th day of August, A. D. 1871. I am not positive about that. We left the town of Morris on the 9th of August. The location was made during August and September, 1871, and I do not know whether we ran into October or not.

15 Q. What months was the location made on the 1872 line?

A. The 1872 line was begun about the 1st or 2nd of May, 1872, and was carried on from time to time up to, possibly, August of that year.

16 Q. Who were you acting under in making this 1872 location; who had chief management of the road?

A. My father, C. F. Morris, was chief engineer.

17 Q. Who was president of the road at that time?

A. George L. Beaker was president.

18 Q. From whom were your instructions received?

A. I received my instructions from the chief engineer.

109 19 Q. When you started out to make that location was there any idea in the office that there would be a change from the location of 1871?

A. I do not know.

20 Q. Did you have any instructions in regard to it?

19 *Q. When you started out to make that location was there any idea in the office that there would be a change from the location of* 1871 *?*

A. I do not know.

20 *Q. Did you have any instructions in regard to it?*

A. When we made the survey of 1871 we rendered a report of the character of the country and our opinion of it. We also made estimates of the probable cost of constructing it—of the 1871 line. In order to make those estimates of course we had to take into consideration the construction of the country, etc. The proper officers received a more or less good idea of the country we passed through.

21 Q. How far on either side of the line were explorations made in order to locate the line?

A They were made on an average of three or four miles on either side. By actually going over the ground in that country we could observe on horseback and in wagons the distance beyond where——

22 Q. (Interrupting.) These observations were made and the line was finally staked out as located in 1871 and reported to the head office?

A. Yes, sir.

23 Q. When you started on your 1872 expedition were there any directions given to you as to finding a better location?

A. Yes, sir. I was authorized not to confine myself strictly to the

locality of 1871 location, but select a line—the best line I could—within a reasonable distance of that.

110 24 Q. Did you go out on that survey to relocate a line? Did you go out from the office with the idea of relocating a line at that time?

A. I do not understand.

25 Q. (Interrupting.) What was the expedition of 1872 for—what did it go out for?

A. To locate the best line we could.

26 Q. Was there a line already located?

A. Yes; but I did not consider that line as the best.

27 Q. Was that the idea of the office?

A. I couldn't say as regards to that.

28 Q. You didn't have any instructions when you left about making another line?

A. No, sir; I was not here when the survey was ordered. I received my instructions to go where Glyndon is now and take charge of a party; there take up the line at Glyndon, where it was staked down, and from there run north of it to St. Vincent. I do not know as I received any written instructions in regard to changing the line at all, but to use my own judgment in staking out the line.

29 Q. Were your instructions, then, at that time of such a character as authorized you to materially change the line as located at that time or simply to make such changes as would be needed for engineering purposes upon the line already located?

A. I was not hampered with any definite instructions in regard to where I should put the line, but to use my judgment in locating it, with a view to getting the best line through the country and on the best ground at the most reasonable expense.

Q. 30. You considered your authority sufficient to authorize you in changing the route ten or twenty miles if you so desired?

111 A. Yes, sir; I so considered it. If I had found those marshes running ten miles farther eastward I should certainly have run my line farther eastward.

31 Q. When did you first report to the home office in regard to the needed change?

A. I had run my line up to Sand Hill river and there struck this large swamp immediately east of Beltrami.

32 Q. How did it come that you first deviated from the located line of 1871?

A. To get away from the marsh of Beltrami and the bad ground in and around Wild Rice river.

33 Q. Where did the deviation commence?

A. Immediately at Glyndon.

34 Q. In the first expedition, then, upon that survey in 1872 did you go over; and, if so, how far north did you go from the located line of 1871 personally?

A. Except to ride out on the line and look around; we didn't run any line at all.

35 Q. You didn't attempt to carry out in any way the line of 1871?

A. Not there, sir.

36 Q. Was your survey being made at that time with the idea of having it followed by immediate construction?

A. It was.

37 Q. Did you say what season of the year that was?

A. I think I left St. Cloud the 29th of April. I think it was about the first week in May when we started that location.

38 Q. Were your instructions at that time to find a location upon which a road could immediately be built at that time, in the spring of the year, rather than follow out the location of 1871?

A. My instructions were to use my judgment in regard to the matter—not confining myself to the 1871 location, but to lo-
112 cate the best line and upon the best ground. I was perfectly authorized to make any changes I saw fit.

Q. 39. Did you consider your expedition was more in the light of relocating a general line through that country than it was simply to fix the actual point of construction on the line located in 1871?

A. I was in charge there and was authorized to make any changes I saw fit. Part of my duty was to make those changes if I saw fit. Part of it was to stake out the work ready for the men to do the work after I had made my selection of locality.

40 Q. Your duty, as you understood it, was to locate a route, was it?

A. Yes, sir. My idea was not to locate a new route entirely, but simply to locate a route. I might use the whole line entirely if, in my judgment, that was the best line. The country east of the present location I knew very little about. It was my impression, after passing over the line in 1871, that the best line could be obtained east of the 1871 line.

41 Q. Was that matter discussed in locating the line of 1871?

A. In 1871 we were running right through there exploring the country on either side of us as we went along.

42 Q. Is it usual when an expedition is sent out to construct a road that the change should have been made to the extent it was in this case without any special instructions from the home office?

A. We did not stake out the line of 1871 with the idea that the graders would follow on our heels.

43 Q. Are not those changes which are to be made in finally fixing the line for construction merely the changes required by good engineering in building a road before locating it?

A. I think they are.

44 Q. Did you consider the changes made in the 1872 line within the proper limits of an engineer's discretion?

A. I do, where he has the necessary authority to use his judgment.

45 Q. Your instructions in this particular case were more broad than they usually are?

A. Yes, sir.

113 46 Q. It was considered at the home office that there might be reason for changing the location to the extent to which it was finally changed in this case?

A. I presume so. My instructions were to use my judgment—go where I thought best.

47 Q. Without regard to the located line?

A. Yes, sir; without regard to it.

48 Q. When did you report your changes?

A. When I got up to the marsh immediately east of Beltrami, and was just exploring the country either side of it. The chief engineer came along, and it was just at that time I made up my mind that I had to go back of the line 12 or 15 miles. We explored the country between the present location and the location of 1871, and he also became satisfied that there was no use trying to find a crossing in this particular slope between where the line is now and the line of 1871. He then authorized me to go on as I intended to go in the first place and put the line farther eastward.

49 Q. Coming back to the line of 1871, where it passes this slough, was the line actually staked out and located on this slough passing——

(Witness asks for question again.)

50 Q. The question was, in 1872 whether you could construct a line passing that swamp as it did pass it at Beltrami, or as it might have passed it to the westward in 1871?

A. It couldn't have been passed; we——

51 Q. (Interrupting.) What would have been the necessary deviation to have passed this swamp or marsh upon the 1871 location?

A. I suppose we could have crossed it probably about three miles. We would have had to go within a mile or so of the Red River.

52 Q. How did it happen that the line was located where 114 it was in 1871 in passing this marsh?

A. When we started from the Salt Spring line we calculateda course that would carry us directly in a straight line to St. Vincent, not knowing very much about the country. The presumption was that we could run in a tolerably straight line, so we continued that course as far as we could until we struck this bad country. We got up near the Red Lake crossing. In order to get a reasonably good crossing of the Red Lake river in that locality we swung easterly in our general direction; then ran a straight line to the crossing of Two rivers, where the old Pembina trail crosses both branches of Two rivers. The reason that we did that was that the country around the swamps of the Grand Marie, which is north of Red Lake river, was reported by our guide and parties we had met. Government surveys were not made at that time. We wanted to keep away from this Grand Marie country.

53 Q. Both lines kept away from that Grand Marie country?

A. Yes, sir.

54 Q. What sort of a course did the 1871 located line make with the Red Lake river?

A. The valley there was very wide and the bluffs very bold; we just crossed an immense bluff finally.

55 Q. Was this swamp you have spoken of near Beltrami the most serious swamp on the road?

A. Yes, sir.

56 Q. This, you say, could have been avoided on either side of it?
A. Yes; it could have been avoided by keeping very close to the bank of the Red River.
57 Q. How much of the construction was made in 1872?
A. The grading was all done from Glyndon north to within ten or twelve miles of St. Vincent.
115 58 Q. Who was at the head of the road at that time?
A. George L. Beacker was president.
59 Q. Was there any objections made or comments upon your proposed change of the line to the eastward?
A. I never heard of any.

Redirect examination.

Questions by Mr. GALUSHA:

1 Q. If you had found the line as located in 1871 practicable to build on, would you have used it under your instructions?
A. I think I would.
2 Q. The changes in the location as made by you in 1872 from the original line were only such as were called for by engineering reasons, were they not?
A. Yes, sir; I made them entirely on account of those reasons.
3 Q. Your instructions were such that if you had found the old line practicable you would have built on it; and also, if you found it impracticable, to make such changes in the location as were necessary for obtaining a good road only?
A. Yes, sir; I had no instructions otherwise at all.
4 Q. Then you were not locating a new line, but simply making the necessary change in the original location?
A. I was making improvements necessary and changes on the first location.
5 Q. Where you could get back on the original location that was done?
A. Yes, sir.
6 Q. In constructing a line of railroad upon a line originally located, while such changes became necessary for engineering reasons, is it not usual and customary for the engineer in charge of construction to make proper deviations in order to obtain a good line?
116 A. Yes, sir; that is the rule. He is usually instructed to take charge of a permanent location that way and go on with the construction. He is invariably authorized to make such changes as he may see fit. Of course, in a locality where they can report they do so, but I was out there where I couldn't report if I wanted to.
7 Q. You were sent up there in charge of the final location and construction of the road, either upon the original location or upon a change of location made necessary by any obstacles that may have intervened between the time of the original location and construction?
A. Yes, sir.

Witness excused.

Fees:

1 day's attendance ------	$3 00
Oaths to 2 witnesses ----	.20
78 fol's of testimony ----	15 60
	$18 80

117 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I, Oscar B. Hillis, of the circuit court of the United States of America for the district of Minnesota, do hereby certify that I was attended by the parties, by their solicitors, at the times and places as stated in the caption and foregoing depositions, and by the said witnesses therein named, and that the said witnesses, being of sound mind and lawful age, were each, before the commencement of the taking of his or her deposition, by me duly and publicly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and that the deposition of each as given was reduced to writing in presence of such witness and the said solicitors, pursuant to stipulation of the solicitors for the respective parties, and from the statements of the witness, and that the deposition of each witness when completed was carefully read over to such witness and in presence of the said solicitors of the parties to said suit.

And I further certify that the exhibits attached to these depositions are the ones referred to therein, and that in the caption and said depositions is contained a complete record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand this 3rd day of June, A. D. 1884.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

Endorsed: "Filed August 5th, 1884. Oscar B. Hillis, clerk."

[Endorsed:] United States circuit court, district of Minnesota. —— —— *vs.* —— ——. Depositions of witnesses on behalf of ——, taken before H. E. Mann, master and examiner in chancery. Fees, $—.

118 STATE OF MINNESOTA, *Ramsey County:*

Norman W. Kittson, of St. Paul, Minnesota, being duly sworn, deposes and says that he has been a resident and citizen of the State and former Territory of Minnesota for more than thirty years last past and was for many years in the service of the American Fur Company, in said Territory of Minnesota, and engaged for many years previous to the admission of the State of Minnesota in trading with the different tribes of Indians then living in said Territory and in the Province of Manitoba.

That his business made it necessary for him to travel from the present city of St. Paul to what was then known as the Selkirk settlement, now the Province of Manitoba, annually and frequently

several times during the course of a year; that his route of travel between said points was by the way of the Red River Valley, in said Territory of Minnesota, and from the frequency of such journeys he became very familiar with the topography and general character of the country in said valley; that his journeys through said Red River Valley were sometimes on foot and at other times in wagons or carts or by dog sleds, and at all seasons of the year, and from information thus derived by actual travelling over and through and observing said Red River Valley in all parts thereof he knows personally the character of the country over which the original line of definite location of the St. Paul and Pacific St. Vincent Extension, made in the year 1871, ran, as well as the line upon which said railroad (now the St. Paul, Minneapolis and Manitoba) was built; that said original line of definite location, from a point a short distance north of Glyndon to a point near Snake river, passed through and over
119 very large marshes and swamps, which in wet seasons are and have always been wholly impassable to travel of any kind, but in dry seasons can sometimes be driven or walked over; that said range of marshes commences about 12 miles north of Glyndon and extends northerly through townships 143, 144, 145, and 146 and 147, in ranges forty-seven and forty-eight, and are from four to twelve miles in width; and affiant believes that it would be wholly impracticable to build a railroad or any road over and upon the line originally located by said St. Paul and Pacific R. R. Co. in 1871, and from his knowledge of said Red River Valley he believes that no available or practicable location for building said line of road could have been made any further west than the present line upon which the same has been constructed. Affiant further says that the fall of 1871 was exceedingly dry, and that many of said swamps and marshes could probably have been passed over at that time on foot with little difficulty, but that in ordinary seasons the route of said line surveyed in 1871 would have been, for parts of the season, wholly impassable for traveling of any kind and unfit for the construction of a road of any character, as much of said line passing through said swamps would have been covered by water.

Affiant further says that the line finally adopted by said railroad company is undoubtedly the one best calculated for the interest of and most accessible to the settlers in said valley, and if constructed on said first line said road would at times have been wholly inaccessible by reason of said swamps, and would in wet seasons — been covered in many sections by water.

120 Further, affiant says that he knows of his own personal knowledge that at the time of the location of said first-named line, in 1871, and up to the time of the location of said constructed line in said Red River Valley, there was no settlers north of Glyndon upon either of said lines, but said country through which said lines so passed was then wholly unsettled and unoccupied, and that the rights or interests of no settlers or occupants of said lands were or could be injuriously affected by said change of line.

N. W. KITTSON.

Subscribed and sworn to before me this 21st day of April, 1880.
[SEAL.] EDW. J. SCHURMEIER,
N. P., Ramsey Co., Minn.

(Endorsed on back:) It is agreed that the above and within affidavit may be read as testimony on behalf of plaintiff in suits in U. S. C. C. by St. P., M. & M. R'y Co. *vs.* Chas. W. Greenalgh and same *vs.* Wenzel upon joint hearings on reason for change of location of line of road, subject, together with other testimony taken on that point, to objection as irrelevant and immaterial. 5 June, 1884. James B. Beals, solicitor for defendants. Filed Sept. 16, 1885. Oscar B. Hillis, clerk.

121 Testimony of Henry T. Welles, taken in suit of Northern Pacific R. R. Co. *vs.* St. Paul and Pacific R. R. Co. *et al.*, and read in evidence pursuant to stipulation in this cause.

HENRY T. WELLES, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

Q. You reside at Minneapolis, I believe?
A. Yes, sir.
Q. How long have you resided there?
A. 24 years.
Q. You are familiar with the Minneapolis and St. Cloud Railroad Company, are you not?
A. I am, generally.
Q. State what your connection has been with it, please.
A. A stockholder and director.
Q. Have you not also acted as its secretary at some time?
A. I don't remember that I have.
Q. When was it incorporated?
A. About 1856, by a special charter.
Q. State whether or no this company ever located upon the ground any line of road between St. Cloud and — Superior. I refer to the line of road that it was authorized to construct connecting the waters of the Lake Superior with the line of the St. Paul and Pacific road.
A. It never did, to my knowledge.
Q. Did it ever construct any road whatever upon that line or do any work of construction thereon whatever?

Objected to as immaterial.

A. No.

Cross-examination:

Q. State whether the Minneapolis and St. Cloud Railroad Company ever surveyed any lines of road; if yea, what lines.
A. Yes; the line from St. Cloud towards the Minnesota river. It was a sub-company that did this, organized under the Minneapolis and St. Cloud Railroad Company.
Q. Where was the chief office of this company?
A. It was at Minneapolis at one time, within six years past; before that it was at St. Cloud.

Redirect:

A. The line to which you refer, from St. Cloud towards the Minnesota river, was a line wholly west of the Mississippi river, was it not?

A. It was.

HENRY T. WELLES.

122 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

Supplemental Statement of Admitted Facts.

1. After the year 1873 and until May, 1878, no work of construction was done on the unfinished portions of the railroad of the St. Paul and Pacific R. R. Co., nor did that company or its receiver ever by vote, resolution, or otherwise accept or assent to the provisions of the act of the Legislature of Minnesota of March 1st, 1877, and particularly of section ten thereof, unless the fact that the company built the remainder of its road after the passage of the act of the Legislature of March 9th, 1878, amounted to an acceptance thereof or assent thereto.

2. The complainant's road was not completed along and opposite to the land in question until a long time after the defendant filed his pre-emption claim thereto. The annexed letter of the Commissioner of the General Land Office, directing a withdrawal, and the map therein mentioned, showing the ten and twenty mile limits of the grant mentioned in folios two hundred and eight to two hundred and ten of the bill, were filed in the local land offices on or about February 15, 1872. The letters, copies of which are hereto annexed, marked Exhibit "A," dated, respectively, Dec. 20, 1871, February 6, 1872, June 18, 1872, June 25, 1872, Sept. 3, 1872,
123 Dec. 4, 1873, May 27, 1880, and June 10, 1880, show the action of the Department of the Interior and of the Commissioner of the General Land Office as to the condition of the grant and its adjustment after the filing of the map of definite location, Nov. 18, 1871. On Sept. 13, 1872, the order vacating the withdrawal of lands as originally made in February, 1872, was revoked by direction of the Commissioner of the General Land Office, communicated to the local offices by telegrams, pursuant to the said letter of the Secretary of the Interior to him of that date, which withdrawal has never been revoked by the Interior Department. The road in question was completed to the satisfaction of the State, and certificates thereof were made by the Governor and filed in the Department of the Interior before the commencement of this suit. The time of the completion of the road is correctly stated in the letter of the Commissioner of the General Land Office, dated May 22, 1880, to the

Secretary of the Interior, embraced in Exhibit "A." Work was at one time suspended on the road, in the fall of 1872, and in 1873, in the suit of John S. Kennedy *et al. vs.* The St. Paul & Pacific R. R. Co. *et al.*, in this court, commenced July 14th, 1873, Jesse P. Farley was appointed receiver of the road and of all its property and rights, and by order of Sept. 1st, 1873, he was authorized by the court to complete the road and to issue debentures for that purpose, and the road remained in the hands of the receiver until about the time of the completion of the whole thereof, and that portion not completed in 1873 was completed in 1878 and 1879 under an order of this court in that suit, made in May, 1878. The said Farley was not discharged from his trust as receiver until May 8, 1883, although the complainant became the owner of the road at the time stated in the bill.

3. The maps of location of the line of road from Crow Wing, by way of Otter Tail and Rush Lakes, filed in the Depart-
124 ment of the Interior in 1869, and of the line from St. Cloud to St. Vincent, filed Nov. 18, 1871, showing the lines then laid down, are in evidence, and transcripts thereof may be filed herein by either party, showing the general route on a small scale, as a part of the record, it being immaterial to show the same in detail. It is admitted that a line was run upon the ground in 1870 from the end of the line surveyed in 1869 through to St. Vincent and a map thereof was made, but no action thereon was taken by the board of directors of the company, nor was any map thereof filed in any public office of the State or of the United States. A map of such line on a small scale may be filed herein, as above provided, in case of other maps.

4. All acts of the Legislature of Minnesota and of Congress mentioned in the pleadings or otherwise material are to be considered in evidence and may be referred to at the argument.

5. The St. Cloud and Minneapolis Railway Company mentioned in this suit never built or located any line of railway and did nothing at any time towards earning any of the lands granted to the State for railway purposes.

6. The defendant settled on the lands in suit June 2nd, 1874, and filed his declaratory statement September 2, 1874. He made valuable improvements on the land in suit prior to Jan. 1, 1875, and the value of the property claimed by the complainant in this suit is fifty-five hundred dollars. The certified papers as to his pre-emption filed in this cause shows the origin and character of his claim to the lands, and a patent was issued to him therefor upon such claim in the usual form, dated Dec. 20th, 1883.

7. After the completion of the road and on the 24th day of July, 1880, the Governor of the State of Minnesota executed to the
125 United States a deed of relinquishment *the United States a deed of relinquishment* of the lands in question with certain other lands within the limits of said grant, and he claimed the right to execute it under section ten of the act of the Legislature of March 1, 1877, hereinbefore referred to, and the deed so recites, which deed was recorded in Book C of Railroad Records on page 580 in the

State auditor's office. The defendant may amend his answer so as to state the matters alleged in this paragraph.

JAMES B. BEALS,
Defendant's Solicitor.
R. B. GALUSHA,
Plaintiff's Solicitor.

Oct. 6, 1885.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 20*th Dec.*, 1871.

SIR: I transmit herewith for appropriate action a map designating the route and location of the St. Paul and Pacific railroad from a point at or near St. Cloud to St. Vincent, Minnesota, pursuant to the acts of 3rd of March, 1857, 3rd March, 1865, and 3rd March, 1871. The last of these acts authorized the company to change its line in consideration of a relinquishment of lands. Said relinquishment was filed in this Department yesterday by Hon. B. F. Wade, agent and attorney for the company, and the map should be considered as filed at that date. On first examination of said map I entertained doubts as to the conformity of the route therein shown with the requirements of said act of 1871 on account of its not intersecting the line of the original grant at or near Otter Tail
126 or Rush Lake, the nearest point of the route as amended, being some miles distant from either of said lakes, but further reflection has convinced me that the new route is a substantial compliance with the terms of the act.

Sufficient evidence has been filed in the Department to show that the change of the line is in accord with the legislation of the State of Minnesota, as required by said act of 1871.

I am, sir, very respectfully, your ob't servant,
C. DELANO, *Secretary.*

Hon. Willis Drummond, Commissioner Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., 18*th June*, 1872.

SIR: On the twentieth December last I transmitted to your office for appropriate action a map designating the route and location of the St. Paul and Pacific railroad from a point at or near St. Cloud, Minnesota, to St. Vincent, in said State. I stated in my letter of transmission that sufficient evidence had been filed in the Department to show that the change of line indicated by said map was in accord with the legislation of the State of Minnesota, as required by the act of the 3rd March, 1871 (16 Stat., 588).

This evidence was partly in print and partly by oral assurance of an officer of the railroad company.

On the twentieth of February last a letter was addressed to the Department by Lafayette Emmett, president of the Minneapolis and St. Cloud Railroad Company, alleging that said act of March 3rd, 1871,

was not only not in accord with the legislation of the State of
127 Minnesota, but directly opposed to it. On the receipt of Mr. Emmett's letter its contents were made known, on the 29th of February last, to the attorney of the St. Paul and Pacific Company in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them were given to the Department the order withdrawing lands for said road would be revoked.

No explanation of any kind has to this date been made by the company, and any order that may have been issued by your office withdrawing lands in accordance with my letter 20th December last is hereby revoked.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *3rd Sept.*, 1872.

SIR: Referring to the departmental letter to your office of the 18th June last, in which my order withdrawing lands for the St. Paul & Pacific was revoked, I have now to direct you to rescind said order of revocation and restore the withdrawal with the distinct understanding, however, that this is not to be regarded as a decision on the merits of the case, all questions as to the right of the road to the land being reserved for further consideration.

Very resp'y, your ob't servant,

W. H. SMITH, *Acting Sec'y.*

Hon. Willis Drummond, Comm., Gen. Land Office.

128 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *4th Dec.*, 1873.

SIR: I transmit herewith three maps of portions of the St. Vincent branch of the St. Paul and Pacific railroad showing the road as completed from a point in section 35, T. 138, R. 46, being twelve miles south of the crossing of the N. P. R. R. to a point fifty miles north thereof, in section 32, T. 146, R. 46, from East St. Cloud in Sherbourne Co. at a point where said road joins the branch line of the First Division of the St. Paul and Pacific R. R. to Melrose in Stearns county, 35 miles, and from a point in section 32, T. 146, R. 46, to a point 55 miles north thereof in section seven, township 154, range 47.

Very respectfully, etc.,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r G. L. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 27, 1880.

Hon. C. Schurz, Secretary of the Interior.

SIR: There are pending in this office lists of selections covering a large quantity of land in Minnesota claimed as inuring to the State for the benefit of the St. Paul, Minneapolis and Manitoba Railway Company, successor to the St. Paul and Pacific—St. Vincent Extension—Railroad Company.

By act of Congress approved March 3, 1857 (11 Stats., 195) there was granted to Minnesota "for the purpose of aiding in the construction of railroads from Stillwater by way of St. Paul
129 and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North," etc., the odd-numbered sections of land within six miles of the lines of the roads not otherwise disposed, providing for "indemnity" for lands lost within the "granted" limits, the indemnity to be taken within limits of fifteen miles of the said lines.

The act prescribed the time and manner in which the land should be certified to and disposed of by the Territory or future State, and it was provided that if the roads and branches were not completed in ten years the lands unsold should revert to the United States.

The joint resolution of July 12, 1862 (12 Stat., 624), after reciting that the act of 1857 granted lands to aid in the construction of a branch via St. Cloud and Crow Wing to the Red River of the North, the northern terminus of which was fixed by the Legislature of the Territory of St. Vincent and expressing the belief that the public interests required a change of location of a part of said branch road, provided "that in lieu of that part of the railroad grant to Minnesota Territory by act of Congress approved third March, 1887, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line, between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior," and also provided for indemnity within fifteen-mile limits.

130 The act of March 3, 1865 (13 Stat., 526), increased the grant to ten sections per mile for each of the roads and branches to be taken within twenty-mile limits, provided for the time and manner in which the lands should be selected, certified, and disposed of, extended the time in which the road and branches might be completed eight years from the date of the act, the lands then remaining unsold in case of non-completion of the roads to revert to the United States.

The act of July 13, 1866 (14 Stat., 97), further provided how lands granted to Minnesota might be certified and disposed of.

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127 Minnesota, but directly opposed to it. On the receipt of Mr. Emmett's letter its contents were made known, on the 29th of February last, to the attorney of the St. Paul and Pacific Company in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them were given to the Department the order withdrawing lands for said road would be revoked.

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C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *3rd Sept.*, 1872.

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Very resp'y, your ob't servant,

W. H. SMITH, *Acting Sec'y.*

Hon. Willis Drummond, Comm., Gen. Land Office.

128 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *4th Dec.*, 1873.

SIR: I transmit herewith three maps of portions of the St. Vincent branch of the St. Paul and Pacific railroad showing the road as completed from a point in section 35, T. 138, R. 46, being twelve miles south of the crossing of the N. P. R. R. to a point fifty miles north thereof, in section 32, T. 146, R. 46, from East St. Cloud in Sherbourne Co. at a point where said road joins the branch line of the First Division of the St. Paul and Pacific R. R. to Melrose in Stearns county, 35 miles, and from a point in section 32, T. 146, R. 46, to a point 55 miles north thereof in section seven, township 154, range 47.

Very respectfully, etc.,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r G. L. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 27, 1880.

Hon. C. Schurz, Secretary of the Interior.

SIR: There are pending in this office lists of selections covering a large quantity of land in Minnesota claimed as inuring to the State for the benefit of the St. Paul, Minneapolis and Manitoba Railway Company, successor to the St. Paul and Pacific—St. Vincent Extension—Railroad Company.

By act of Congress approved March 3, 1857 (11 Stats., 195) there was granted to Minnesota "for the purpose of aiding in the construction of railroads from Stillwater by way of St. Paul
129 and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North," etc., the odd-numbered sections of land within six miles of the lines of the roads not otherwise disposed, providing for "indemnity" for lands lost within the "granted" limits, the indemnity to be taken within limits of fifteen miles of the said lines.

The act prescribed the time and manner in which the land should be certified to and disposed of by the Territory or future State, and it was provided that if the roads and branches were not completed in ten years the lands unsold should revert to the United States.

The joint resolution of July 12, 1862 (12 Stat., 624), after reciting that the act of 1857 granted lands to aid in the construction of a branch via St. Cloud and Crow Wing to the Red River of the North, the northern terminus of which was fixed by the Legislature of the Territory of St. Vincent and expressing the belief that the public interests required a change of location of a part of said branch road, provided "that in lieu of that part of the railroad grant to Minnesota Territory by act of Congress approved third March, 1887, which extends northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian, there shall be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State may designate, having its southwestern terminus at any point on the existing line, between the Falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior," and also provided for indemnity within fifteen-mile limits.

130 The act of March 3, 1865 (13 Stat., 526), increased the grant to ten sections per mile for each of the roads and branches to be taken within twenty-mile limits, provided for the time and manner in which the lands should be selected, certified, and disposed of, extended the time in which the road and branches might be completed eight years from the date of the act, the lands then remaining unsold in case of non-completion of the roads to revert to the United States.

The act of July 13, 1866 (14 Stat., 97), further provided how lands granted to Minnesota might be certified and disposed of.

The act of March 3, 1871 (16 Stat., 588), authorized the St. Paul and Pacific Railroad Company to so alter its branch lines as to construct one branch "from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent," and provided for the same proportional grant of lands.

The act of March 3, 1873 (17 Stat., 631), extended the time for the completion "of the railroad from St. Cloud to St. Vincent * * * as now located" nine months from the time as before provided by law.

The act of June 22, 1874 (18 Stat., 203), again extended the time for the completion of the road "until the third day of March, A. D. 1876, and no longer," upon conditions saving the rights of *bona fide* settlers.

December 20, 1871, the Secretary of the Interior transmitted to this office for appropriate action a map showing the definite location of the branch line from a point at or near St. Cloud to a point at or near St. Vincent, giving dates of field work, sworn and sub-
131 scribed by the chief engineer and certified by the Governor of Minnesota Nov. 7, 1871; adopted by resolution of the directors March 22, 1871. The Secretary stated that due relinquishment of lands had been made as required by the act of March 3, 1871, authorizing the change of route, and evidence filed that such change was in accord with State legislation. Lands were duly withdrawn for the benefit of the grant on the line thus definitely located, and they so remain.

December 4, 1873, the Secretary of the Interior transmitted to the office three maps showing portions of the line as constructed, viz:

1. From a point in Sec. 35, T. 138, N. R. 46 W., twelve miles south of the Northern Pacific railroad to a point fifty miles north thereof, in section 32, 146 N., 46 W.

2. From East St. Cloud to Melrose, 35 miles.

3. From a point in 32, 146 N., 46 W., to a point fifty-five miles north thereof, in section 7, 154 N., 47 W.

Said maps were sworn and subscribed to by the chief engineer Nov. 18, 1873, and certified by the Governor Nov. 22, 1873. They were recognized by the Department and by this office, and lands coterminous with the line so constructed have been patented to the State for the benefit of the St. Paul & Pacific railroad, St. Vincent Extension.

February 8th, 1879, you transmitted two maps showing the line of the road as constructed from Melrose, in section 34, 126, 33, to Alexandria, in section 18, 128, 37, and from a point in section 7, 154, 47, to St. Vincent, in section 2, 163, 51, with a branch from St. Vincent to the international boundary, in section 25, 64, 51, an es-
timated distance of 102 miles. Both maps are duly executed
132 by the officers of the company January 23rd and by the Governor January 31, 1879. You declined to take any action on said maps other than to direct their filing, for the reason that the

grant expired by limitation March 3, 1876, "prior to the completion of the road, and as it does not appear that said road is yet completed."

Nov. 17, 1879, Messrs. Curtis, Earle, and Burdette, attorneys, filed in this office evidence showing that the St. Paul, Minneapolis and Manitoba Railway Company had become the legal successors of the St. Paul and Pacific Railroad Company.

January 16, 1880, there was referred to this office by the Department, without action, a map showing the line as constructed of the St. Paul, Minneapolis and Manitoba railroad, from Alexandria to a point 12 miles south of the Northern Pacific railroad, an estimated distance of eighty miles. The map was sworn and subscribed by the chief engineer and certified by the general manager December 23, 1879, and by the Governor January 9, 1889. It was accompanied by a letter from the Governor dated January 10, 1880, asking the certification of lands accordingly.

By the evidence on file, as above recited, it appears that the road is now fully completed. It was not completed within the time required by law, but inasmuch as no forfeiture of the grant has been declared by competent authority I am of opinion that so far as that question is concerned the State would still be entitled to patents for the benefit of the road. Upon this point, however, I respectfully ask your instructions.

133 But the road has not been constructed on the line of definite location. I enclose a map or diagram of Minnesota, on which I have caused to be drawn a red line showing the definite location and a blue line showing the constructed road, illustrating as nearly as practicable on so small a scale the deviations. It will be seen at a glance that the deflections are numerous, and in some instances for long distances, from six to ten miles from the located line.

I am informed by counsel for the company that they are prepared to place before you evidence to show the necessity for the deflections in constructing the road and the reason why, in their opinion, the case should be held as coming within the rules established by the Department in recent decisions concerning other grants and involving like questions.

I have declined to submit lists of the lands selected until instructed by you in the premises.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 10, 1880.

SIR: I am in recept of your report of 27th of May last upon the status of the grant of lands made to the State of Minnesota to aid in the construction of a railroad from St. Cloud to St. Vincent, in that State.

The report and accompanying map show that a road has been

constructed between the above-named points by a company
134 recognized by the State authorities as being entitled to the benefits of the grant; that the road was not completed within the time directed by the statutes of the United States; that no forfeiture of the grant has been declared, and that the line of the road as constructed deviates in some places from the line of the definite location indicated by the map filed in this Department in 1871, upon which the withdrawal for the benefit of the grant was made, the largest deflections being between Glyndon and St. Vincent.

Upon these facts you submit two questions for my consideration, and request to be instructed in the premises—

First. Whether, considering the failure to complete the road within the time directed by the statute, the State is entitled to patents for the benefit of the St. Paul, Minneapolis and Manitoba Railway Company, the present owner of said road?

Second. Whether, in view of the deviations in the line of construction from the line of definite location, the State is entitled to patents under the grant for the benefit of said company?

Upon the first point you express the opinion, in effect, that, notwithstanding the road was not completed within the time mentioned in the act of March 3, 1873 (17 Stat., 631), the State is entitled to patents under the grant.

I fully agree with you upon this point, the act of June 22, 1874 (18 Stat., 203), the conditions of which have not been accepted by the company, being held as neither enforcing nor declaring a forfeiture of the grant.

135 (Kemper *v.* St. Paul & Pacific R. R. Co., Copp's L. O., vol. 3, p. 170.) The law controlling this question is well settled. (Schulenberg *v.* Harriman, 21 Wall., 44.)

Upon the second point you express no opinion.

The only question for determination, however, is whether the deflections in the line of the constructed road are of such character as to make it a different road from that contemplated by the grant and withdrawal; then the State has no right to patents for the lands claimed.

But it is the road so contemplated if the deflections became necessary in order to avoid engineering obstacles which could not be otherwise overcome without exaggerated expense, or to remedy defects in the original location. In other words, if the road as constructed is a substantial compliance with the granting acts, the State is entitled to the benefits of the grant.

(Opinion of the Attorney General of Feb. 2, 1880, Copp's L. O., vol. 7, 12; case of McGregor, Western R. R. Co., *id.*, 27; case of Hastings and Dakota R. R. Co., decided April 14, 1880.)

Since your report was received the said company has filed in this Department affidavits showing why the road between Glyndon and St. Vincent was not constructed on the line as located in 1871. The affidavits were made by the following parties, respectively:

Charles A. F. Morris, who was chief engineer of the St. Paul and Pacific R. R. Co. in the years 1871 and 1872, and who surveyed and located the line of 1871 and re-examined it preparatory to con-

structing the road between Glyndon and St. Vincent in 1872
136 Charles J. A. Morris, civil engineer, who was employed by said company in 1871 and 1872 in the location and construction of said road between the points aforesaid; Andrew De Graff, railroad constructor for said company, under whose personal supervision a large part of the St. Vincent Extension road was built; Norman W. Kittson, whose business for many years required him to make journeys yearly from St. Paul to Manitoba via the Red River Valley, and who is well acquainted with the country through which said road is built; James J. Hill, who was engaged from 1868 to 1879 in the transportation business on the Red River of the North, between St. Paul and Winnipeg, in Manitoba, and who has passed through the Red River Valley at all seasons of the year, and is well qualified to depose as to the facts alleged by him, and William P. Payte, a civil engineer, well acquainted with the topography of the country through which said road passes.

The affidavits of these witnesses show that there are extensive swamps and marshes in townships 143, 144, 145, 146, 147, and 154, ranges 47 and 48, and in townships 156, 157, and 158, in ranges 49 and 50; that the season during which the location of 1871 was surveyed was very dry in the section of country through which the road was located; that at that time the said swamps and marshes were comparatively dry, and the surveyors walked over them without difficulty; that the line was located over said swamps in the belief that it was a feasible route, and upon which the necessary material could be easily obtained for grading and ballasting; that in the winter of 1871 and 1872 there were heavy falls of snow in that
137 vicinity, and the weather of the spring and summer of 1872 was very wet; that upon a re-examination of said line in 1872, preparatory to commencing the construction of said road, it was found that the country for a great distance in the above-named townships, and over which the line of 1871 was located, was under water to the depth of several feet; that earth in sufficient quantities to raise the road-bed above water could not be obtained except by hauling it a long distance at a great expense; that the largest of said swamps was in township 147, ranges 47 and 48, and was twelve miles wide; that said swamps were under water certain seasons almost every year, and presented engineering difficulties in the way of building said road of such a character as to make it necessary to locate the line of construction far enough to the east to avoid the same; that the point of crossing the margin of the large swamp above mentioned governed the location of the road for many miles north and south thereof; that upon careful examination it was found that no ground over which it was practicable to build the road could be found nearer to the definitely located line than to the east of said swamps and marshes, where the road is constructed; that the point of crossing of Red Lake river at Crookston was the most feasible one and the best adapted for bridging that could be found for many miles in either direction; that no lands in that vicinity were settled upon or entered with reference to the line of definite location prior to the establishment of the line of actual con-

struction; that the progress of settlement kept pace with the construction of the road, and that the road as built is the shortest and best practicable one that could be had between Glyndon and St. Vincent.

138 From the foregoing it is apparent that the deflections from the line located in 1871 between the points last above mentioned were necessary to the proper construction of the road. It is clear that the road as now constructed is of immeasurably more value to the inhabitants of Red River Valley along its line and better adapted to the purposes for which the road was intended than it would have been had it been built through said swamps and marshes, to say nothing of the extra expense of building and keeping it in repair over the latter route.

One of the principal objections to varying from the line of definite location in construction — a land-grant road does not exist in this case, viz., that settlers locate and purchase lands at the advanced rates in view of the definite location and for convenience to the road. The deflections south of Glyndon do not appear to be material.

I am therefore of the opinion that the said road was built in substantial compliance with the requirements of the granting acts, and that the State is entitled to patents for the granted lands, and you will proceed in the work of the adjustment of the grant accordingly, having due regard to all conflicting claims to the lands.

The affidavits aforesaid are herewith transmitted for filing in your office.

Very respectfully, C. SCHURZ, *Secretary.*

To Commissioner of the General Land Office.

139 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *February 6th*, 1872.

Register & receiver, Alexandria, Minn.

GENTLEMEN: I transmit herewith a map showing the line of definite location of the St. Paul & Pacific railroad, St. Vincent Extension, with the ten and twenty mile limits of the land grants made thereto under the act of March 3rd, 1871.

You are hereby to withdraw from sale or location, pre-emption or homestead entry, all the odd-numbered sections falling within those limits, and to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits, and dispose of the same under the pre-emption and homestead laws only, and at that ratability, except in cases of settlement under the pre-emption laws made prior to the date of definite location of the road November 7th, 1871. In such cases you will permit the parties to prove up and pay for their claims, either upon odd or even numbered sections, at the rate of $1.25 per acre.

The even-numbered sections outside of the ten-mile limits are not affected by the withdrawal.

The right of the railroad company attaches from the date of the definite location of the road, November 7th, 1871.

You will please acknowledge the receipt of this letter by its date.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

140 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June 25th*, 1872.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: Under date of the 18th inst. the honorable Secretary of the Interior revoked my order of the 6th of February last to the register and receiver at Alexandria, Minn., directing the withdrawal of certain lands for the benefit of the St. Paul and Pacific R. R., St. Vincent Extension, and instructing you to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits of said withdrawal, and to restrict the disposal of such even sections to homestead and pre-emption.

Upon the receipt of these instructions you will hold all the lands affected by said order of withdrawal for the benefit of some other railroad. You will at once publish a notice in two issues of a newspaper of general circulation in your district to the effect that said order of withdrawal has been revoked.

The receiver, acting as disbursing agent, will defray the expenses of such notice, and refer on his vouchers to this letter as his authority for the disbursement.

You will please acknowledge the receipt hereof and forward to this office a copy of the paper containing the notice referred to.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

141 U. S. LAND OFFICE,
DETROIT, MINN., *May 28th*, 1878.

To the attorney of the St. Vincent Extension, St. Paul and Pacific R. R.:

You will take notice that Charles Wenzel has this day made application at this office to make proof and payment on the N. W. ¼, sec. 1, T. 154, R. 48, settled upon June 2, 1874; that on the 22 day of July, 1878, at this office, at Crookston, Minnesota, at 10 o'clock a. m., said proof will be heard and taken unless cause be shown to the contrary, and at which time you may appear and show cause, if any you have, why such proof and payment should not be made.

THOS. C. SHAPLEIGH, *Register.*

142 CROOKSTON, MINN., *July 22nd*, 1878.

Personally appeared before me, register of the U. S. land office at Detroit, Minnesota, Charles Wenzel, of Polk county, Minnesota, who, being first duly sworn, on his oath says he is the identical person who made pre-emption filing No. 1186, at the U. S. land office at Detroit, Minnesota, Sept. 3, 1874, for the fractional northwest quarter of section 1, T. 154, R. 48. He also says that his true name is Charles Wenzel and not Carl Renzel as shown by his declaration

papers issued from the clerk of the circuit court of the county of Brown, State of Wisconsin, on the 7th day of April, A. D. 1858.

CHARLES WENZEL.

Sworn and subscribed before me on this 22nd day of July, 1874.

THOS. C. SHAPLEIGH, *Register.*

143 We, E. C. Davis and Felix Gregnire, of Polk county, Minn., do solemnly swear that we have known Charles Wenzel for four years last past; that he is over the age of 21 years and has declared his intentions to become a citizen of the United States, and is an inhabitant of the N. W. fractional quarter of section No. 1 of township No. 154 north of range No. 48, and that no other person resided upon the said land entitled to the right of pre-emption; that the said Charles Wenzel entered upon and made a settlement in person on the said land since the 4th day of Sept., 1878, to wit, on the 1st day of June, 1874. Since said settlement he has built a log house 12 x 14 feet in size, board roof, one door and two windows, board floors, and has lived in the said house and made it his exclusive home from the 15th day of June, 1874, till the present time; that he did not remove from his own land within the State of Minnesota to make the settlement above referred to, and that he has, since said settlement, plowed, fenced, and cultivated about seven acres of said land, and in addition thereto he has built a log stable 16 x 18 feet in size.

E. C. DAVIS.

his
FELIX x GREGNIRE.
mark.

I, Thomas C. Shapleigh, do hereby certify that the above affidavit was taken and subscribed before me this 22nd day of July, A. D. 1878.

THOS. C. SHAPLEIGH, *Register.*

We certify that E. C. Davis and Felix (his x mark) Gregnire, whose names are subscribed to the foregoing affidavit, are persons of respectability.

THOS. C. SHAPLEIGH, *Register.*
P. C. SLETTEN, *Receiver.*

144 I, Charles Wenzel, claiming the right of pre-emption, under the provisions of the act of Congress entitled "An act to appropriate the proceeds of the public lands and to grant pre-emption rights," approved Sept. 4, 1841, to the northwest frac. quarter of section No. 1 of township No. 154 north of range No. 48, subject to sale at the land office of Detroit, Minnesota, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or

benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever by which the title which I may acquire from the Government of the United States would inure, in whole or in part, to the benefit of any person except myself, nor have I heretofore filed for another tract of land.

CHAS. WENZEL.

I, Thos. C. Shapleigh, of the land office at Detroit, Minnesota, do hereby certify that the above affidavit was taken and subscribed before me this 22nd day of July, A. D. 1878.

THOS. C. SHAPLEIGH, *Register*.

145 UNITED STATES LAND OFFICE, *September* 17, 1878.

Hon. Commissioner General Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith the following rejected pre-emption cases, to wit:

John P. Pillard, N. E. ¼, sec. 29, T. 150, R. 46, based on D. S. No. 714, dated March 17th, 1873; settlement alleged July 7th, 1872.

Thomas Bradshaw, N. E. ¼ N. W. ¼, N. W. ¼ N. E. ¼, sec. 34, S. E. ¼ S. W. ¼ and lots 3 and 7, sec. 27, T. 150, R. 47, based on D. S. No. 730, dated March 31st, 1873, alleging settlement August 20th, 1872.

Martin Swenson, lots 5 and 12, section 26, N. ½ N. W. ¼ and lots 1 and 2, sec. 35, T. 150, R. 47, based on D. S. 733, dated April 1st, 1873, alleging settlement July 30th, 1872.

John Darkow, E. ½ N. E. ¼, S. W. ¼ N. E. ¼, and lots 1 & 2, sec. 25, T. 150, R. 47, based on D. S. 747, dated Ap'l 7th, 1873, alleging settlement Aug. 15th, 1872.

Casper Mooser, N. E. ¼ N. W. ¼, lots 5, 6, 7, and 13, sec. 29, T. 150, R. 47, based on D. S. 748, dated April 7th, 1873, alleging settlement July 15th, 1872.

Joseph Barrett, S. W. ¼ S. W. ¼, sec. 29, lot 8, sec. 30, and lot 1, sec. 31, T. 150, R. 46, based on D. S. No. 753, dated Apr. 7th, 1873, alleging settlement June 10th, 1872.

Charles Greenalch, lot 14, sec. 26, lots 3 & 5 & E. ½ S. E. ¼, sec. 35, and lot 6, sec. 36, T. 156, R. 47, based on D. S. 775, dated April 9th, 1873, alleging settlement June 26th, 1872.

Louis Johnson, lots 10 and 11, sec. 28, N. W. ¼ N. E. ¼ and lot 1, sec. 33, T. 150, R. 47, based on D. S. 810, dated April 29th, 1873, alleging settlement June 20th, 1872.

Hans C. Johnson, lot 5, S. W. ¼ S. W. ¼, sec. 28, lots 9, 10, 11, and 12, sec. 29, T. 150, R. 47, based on D. S. 812, dated April 29th, 1873, alleging settlement June 20th, 1872.

[Written across the face in red ink:] With entry and proof.

James Greenalch, lots 7, 8, 9, 10, and 11, sec. 33, T. 150, R. 46, based on D. S. 832, dated May 14th, 1873, alleging settlement July 8th, 1872.

Charles Wenzel, N. W. ¼, sec. 1, T. 154, R. 48, based on D. S. 1186, dated Sept. 3rd, 1874, alleging settlement June 1st, 1874.

The foregoing cases were rejected for the reasons that they embrace land in odd-numbered sections within the ten and twenty mile limits of the grant to the St. Paul and Pacific Railroad, St. Vincent Extension, Company, and settlements were not made in said cases until subsequent to the time that the rights of said company attached to the land.

Very respectfully,

THOS. C. SHAPLEIGH, *Register.*

146 "3—2950. DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *May* 6, 1880.

"Register and receiver, Crookston, Minnesota:

"GENTLEMEN: September 17, 1878, you transmitted applications by the following-named parties to make proof on their filing, hereinafter described:

"You rejected the applications in question because of the superior right of the St. Vincent Extension, St. Paul & Pacific (now the St. Paul, Minneapolis & Manitoba) Railroad Company.

"The names of the parties and the lands in question are described as follows:

* * * * * * *

"D. S. 775, Charles W. Greenaleh, lot 14, section 26, lots 3 and 5 and E. ½ S. E. ¼, section 35, and lot 6, section 36, town. 150, range 47; filed April 9, 1873; settled June 26, 1872.

"D. S. 1186, Charles Wenzel, N. W. ¼, section 1, town. 154, range 48; filed September 2, 1874; settled June 2, 1874.

* * * * * * *

"All of the foregoing lands * * * are within the ten-mile limit of the grant to the St. Vincent Extension, St. Paul & Pacific Railroad Company. The road was definitely located opposite the same in September, 1871.

"The parties allege settlement subsequent to the date of definite location of the road. Their filings, so far as they cover the land in odd-numbered sections, are accordingly held for cancellation, subject to appeal.

"In the cases of Pillard, Barrett, and James Greenaleh the lands embraced in their filings are within the indemnity limits of the grant aforesaid.

"Under the decision of the honorable Secretary of the Interior, dated April 7, 1879, in the case of Blodgett *v.* The California & Oregon Railroad Company, these filings will be allowed to remain, subject to the right of the company.

"Should said company fail to select the lands covered by their filings as lieu land upon the adjustment of its road the claims of Pillard, Barrett, and Greenhaleh might be perfected, but so long as the road remains unadjusted the claims of said parties are incapable of being perfected. Give due notice hereof to the claimants. The attorneys for the company will be advised by this office.

"Very respectfully, J. A. WILLIAMSON,
Commissioner.

147 "3—2950. DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *November* 24, 1880.

"Register and receiver, Crookston, Minnesota.

"GENTLEMEN: Under date of May 6, 1880, the following applications to make pre-emption proof were considered and rejected, subject to appeal, because of the withdrawal for the St. Paul & Pacific, St. Vincent Extension (now St. P., M. & M.) Railroad Company.

* * * * * * *

"D. S. 775, Charles W. Greenalch, lot 14, section 26, lots 3 and 5, E. ½ S. E. ¼, section 35, and lot 6, section 26, town. 150, range 47; filed April 9, 1873; settled June 26, 1872.

"D. S. 1186, Charles Wenzel, N. W. ¼, section 1, town. 154, range 48; filed September 2, 1874; settled June 2, 1874.

* * * * * * *

"All the foregoing lands * * * are within the ten-mile limits of the grant. * * * The attention of this office has been called to the foregoing applications, and it has been urged that the claims of the parties are confirmed by the act of April 21, 1876.

"The lands within the limit of the grant aforesaid were withdrawn for the benefit of the road by letter of February 6, 1872, which was received at the local office February 15, 1872.

"By letter of June 25, 1872, the withdrawal of February 6, 1872, was revoked, and the lands restored to market at $1.25 per acre, on authority of a letter from Hon. C. Delano, Secretary of the Interior, dated June 18, 1872. The letter of revocation of former withdrawal was received at your office July 5, 1872.

"The lands were again withdrawn by telegraphic instructions of September 3, 1872, received at your office next day. * * * Charles W. Greenlch settled after the order of restoration had been ordered, but prior to the reception of the same at your office. The proof submitted in these cases shows that the parties settled as alleged, and that they have made valuable improvements on the land covered by their respective filings.

"All of the foregoing parties made pre-emption proof and offered to pay for the same, but were refused by you because their settlements were made subsequent to the definite location of the road.

"The Hon. Secretary in the case of W. C. Streeter *vs.* M., K. & T. R. R. Co., decided October 12, 1877, held that the words 'pre-emption and homestead entries,' in section one of the act of April 21, 1876, 'refer to the settlements made in good faith by persons possessing the requisite legal qualification, with a view of entering the lands under the provisions of the pre-emption and homestead laws.'

"It is also held that, where a case has not been adjudicated, the act of April 21, 1876, must be applied even in the absence of an application under it. A., T. & S. Fé R. R. *vs.* Dodge, Secretary's decision of Nov. 7, 1878.

"The settlements of the above-named parties, with the exception of Barrett and Wenzel, were made prior to the reception at your

office of the second order of withdrawal, and while the lands were subject to entry under the stated restoration.

"Their claims are therefore cured by the first section of the act of April 21, 1876.

"In view of the facts as above stated, my decision of May 6,
148 except so far as it related to the claims of Barrett and Wenzel, was inadvertent, and was erroneous, in that it failed to take into consideration the provisions of the act of April 21, 1876, as should have been done under the cited ruling of the Secretary in the case of A., T. & S. F. R. R. Co. *vs.* Dodge.

"The said decision is therefore revoked as to all the parties whose claims are herein stated to be cured by the act of 1876, and should this decision become final the said claimants will be permitted to make entry, the proofs of compliance with law being satisfactory.

"You will so advise the parties in interest. The attorneys for the railroad company will be advised by this office, and allowed sixty days for appeal. Barrett settled upon the land June 10, 1872, after the first withdrawal and prior to the order of restoration. The tracts covered by his filing are within the indemnity limits of the grant to said company.

"Wenzel settled June 2, 1874, long subsequent to the definite location of the road. The land covered by his filing is within the granted limits of said road.

"My decision of May 6, holding Wenzel's filing for cancellation and that of Barrett subject to the right of the company, will stand.

"From papers exhibited to this office it appears that notices of my decision of May 6 were given by you September 27, 1880. At the expiration of the time allowed for appeal you will report the action taken by Barrett and Wenzel.

"Very respectfully, J. A. WILLIAMSON,
Commissioner."

149 U. S. LAND OFFICE,
CROOKSTON, MINN., *Nov. 24th*, 1880.

In the Matter of the Cancellation of D. S. No. 1186 of CHARLES WENTZELL for N. E. ¼, sec. 1, township 154, range 48.

To the Hon. Commissioner of the General Land Office, Washington, D. C.:

The pre-emption claimant, Charles Wentzell, hereby appeals to the honorable Secretary of the Interior from your order and decision, under date of May 6th, 1880, contained in your letter "F" of that date, to the register and receiver of said Crookston land office, holding for cancellation his pre-emption D. S. No. 1186 for conflict with the grant to the State for the St. Paul and Pacific R. R. Co., and for ground of appeal alieges that he settled as a pre-emptor upon said land June 2nd, 1874, and that his said land was excluded and excepted from said grant by virtue of the act of Congress approved June 22nd, 1874, entitled "An act to extend the act

of March 3rd, 1873, entitled An act for the extention of time to the St. Paul and Pacific Railroad Company for the completion of its roads."

And on the further ground that under and by virtue of the act of the Legislature of the State of Minnesota approved March 1st, 1877, the Governor of said State relinquished said land from the effects of said grant to the United States Government, to the end that he, this appellant, might acquire title thereto under the pre-emption or homestead law, the said land of this appellant being beyond that portion of said railroad constructed in 1873.

Nov. 24th, 1880.

R. REYNOLDS,
Att'y for Appellant.

150 UNITED STATES LAND OFFICE,
CROOKSTON, MINN., *May* 21, 1881.

Hon. Commissioner General Land Office, Washington, D. C.

SIR: Referring to your letter "F" of the 6th ult., transmitting to this office arguments by Messrs. Curtis, Earle and Burdett, attorneys for the St. Vincent Extension, St. Paul and Pacific Railroad Company, in reply to the appeal of Charles Wenzel and Joseph Barrett from your decision of May 6th, 1880, I have the honor to report that arguments were served upon the attorneys for the said Wenzel and Barrett on the 28th ult., and that the arguments for the appellants were filed in this office on the 18th inst. by their attorneys, Messrs. Reynolds and Watts and McGrew. Said arguments are transmitted herewith in a separate package, marked "A."

Very respectfully,

THOS. C. SHAPLEIGH, *Register.*

151 3—2950. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Aug. 2nd*, 1881.

Hon. S. J. Kirkwood, Secretary of the Interior.

SIR: I have the honor to submit herewith papers in the case of John P. Pillard *et al. vs.* The St. Paul, Minneapolis and Manitoba Railway Company (formerly the St. Vincent Extension, St. Paul and Pacific Railroad Company), involving certain tracts in town. 150, range 47 W., Crookston district, Minnesota, on appeal from decisions of this office of May 6th and November 24th, 1880.

The papers submitted are as follows:

Application of Pillard *et al.* to make pre-emption proof, I.

Decision of this office of May 6th, 1880, rejecting the applications, II.

* * * * * * *

Appeal from the foregoing decision by Chas. Wenzel, VII.

Argument for the company, VIII.

Argument for Wenzel, IX.

Argument for the company, X.

Decision of this office of Nov. 24th, 1880, revoking decision of

May 6, 1880, except as to cases of Barnett and Wenzel and holding claims as confirmed by act of April 21, 1876, XI.

Notice of appeal by the railway company from decision, Nov., 1880, XII.

152 * * * * * * *

I am, sir, very respectfully, your obedient servant,

N. C. McFARLAND,
Commissioner.

153 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *July 13th*, 1882.

The Commissioner of the General Land Office.

SIR: I have considered the case of John P. Pillard and others *vs.* The St. Paul, Minneapolis and Manitoba Railway (formerly the St. Vincent Extension, St. Paul and Pacific Railroad) Company on appeal from your decision of November 24, 1880.

The tracts are described in detail in said decision and in your letter of transmittal. They are eleven in number, and, except three, are within the ten-mile limits of the grant to the railroad.

The remaining three are within the indemnity limits. All the tracts in question are covered by pre-emption filings.

The facts relative to the dates of withdrawal of the lands, dates of settlement, and filing thereon, etc., are fully set forth by you and need not here be repeated.

You hold as to nine of the entries that they are confirmed by section one of the act of April 21, 1876.

In this I concur, as the proof shows settlement in each case at a time when the lands were by order from your office subject to pre-emption and homestead entry, and that valuable improvements under the several filings have been made. The two remaining claims, viz., those of Joseph Barrett and Charles Wenzel, are rejected by you as not coming within the provisions of the act of 1876.

Wenzel's filing is on land within the granted limits of the
154 road and is by you held for cancellation. Barrett's filing is on land within the indemnity limits, and you allowed it to stand subject to the right of selection by the company.

I agree in the conclusion reached by you as to the first named, since it appears that Wenzel did not make settlement until June 2, 1874, almost two years after final withdrawal of the land for the benefit of the road. As to Barrett's filing, however, I am of the opinion that it comes within the provisions of the remedial statute of April, 1876. It is true he made settlement a few days prior to the date of the order of June 25th, 1872, revoking the order of withdrawal of February 6th, 1872, but being upon the land at the date of the revocation, which again made said land subject to entry, and, having acted in good faith under his settlement, I think that his settlement may, under a liberal construction properly applicable to remedial statutes, be treated as of the date of the order of revocation or of receipt of notice thereof at the local land office, and therefore as coming within the meaning of section one of the act of 1876.

Your decision is modified accordingly, and the papers transmitted with your letter of August 2nd, 1881, are herewith returned.

Very respectfully, H. M. FULLER, *Secretary.*

1026, C, 81.
Vol. 3, 131.

155 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 20, 1882.

The Commissioner of the General Land Office.

SIR: I have examined the application of W. K. Mendenhall, Esq., of counsel, for reconsideration of my decision of the 13th day of July last in the case of John P. Pillard and others (including Charles Wenzel) *vs.* The St. Paul, Minneapolis and Manitoba Railway (formerly the St. Vincent Extension, St. Paul and Pacific Railroad) Company, so far as said decision relates to Charles Wenzel.

The claims involved in that decision were adjudicated under the provisions of the act of April 21, 1876, entitled "An act to confirm pre-emption and homestead entries of public lands within the limit of railroad grants in cases where such entries have been made under the regulations of the Land Department." (19 Stat., 35.)

Wenzel made settlement June 2, 1874, and filed declaratory statement Sept. 2, 1874, as a pre-emptor on the N. W. ¼ of sec. 1, t'p 154, R. 48, Crookston, Minnesota.

This tract is within the ten-mile limit of the grant to the railroad, and Wenzel's filing was by you held for cancellation as not confirmed by the act of April 21, 1876, for the reasons that he did not make settlement until after the withdrawal of the land for the benefit of the road. This action, based upon section 1 of the act, was affirmed by the Department July 13th, as above stated.

In the application for review it is contended that Wenzel's claim comes within the provisions of section three of the act cited.

156 That section provides "that all such pre-emption and homestead entries which may have been made by permission of the Land Department or in pursuance of the rules and instructions thereof within the limits of any land grant at a time subsequent to the expiration of such grant shall be deemed valid, and a compliance with the laws and a making of the proof required shall entitle the holder of such claim to a patent therefor." Applying the law just quoted to the facts as they appear in Wenzel's case, the following inquiry is suggested: Did he make a pre-emption entry by permission of the Land Department or under the rules and instructions thereof at a time subsequent to the expiration of the grant to the railroad?

That his settlement and filing constituted an entry within the meaning of the act of 1876, as well as under the general practice of the Land Department, seems to me obvious.

I am equally well convinced that the entry was made by permission and under authority of the Land Department. The filing was duly made with the local officer, whose action, in addition to being *prima facie* authoritative, was explicitly approved and ratified by your office in letter, bearing date September 23, 1874, directing that

"settlers upon the lands of the St. Vincent Extension * * * who were actual settlers at the date of the act of June 22, 1874, and applied to file within the legal period, are protected by the statute, and their filings may be received," etc.

Wenzel's settlement was on June 2nd, 1874. It is true the act of June 22, 1874, was subsequently declared by one of my predecessors inoperative.

157 *Vide* case of Kemper *vs.* St. Paul and Pacific Railroad Co. (3 Copp., 170). Until that was done, however, all rules and regulations of your office relating to said act of 1874 were properly in force, and all acts of settlement in good faith in accordance therewith are entitled to recognition. The policy of the general law is to protect such settlers in their rights. Especially must such a policy prevail when a remedial statute is invoked, as in this case.

There remains to be considered, then, only the third point of the inquiry, viz:

Was the entry made at a time subsequent to the expiration of the grant to the railroad?

After a careful consideration of the act of 1876 in all its bearings, and especially of section three, as applicable to this case, I am of the opinion that in using the language "at a time subsequent to the expiration of such grant" Congress had reference to the dates named in the various granting acts to railroads as the dates at which the roads should be completed, and not to a time when by legislative or judicial action a forfeiture might be declared.

If such was not the intention of Congress, then this section is meaningless, for after declaration of forfeiture by legislative action or judicial decision the lands would be open to entry under the general pre-emption and homestead laws and without the intervention of a remedial statute.

The original grant under which the construction of the St. Paul and Pacific railroad was authorized was by act of Congress approved March 3, 1857.

158 By act of March 3, 1865, the grant was increased to ten sections per mile, the indemnity limits to twenty miles from the line of the roads or branches, and the time for the completion of said roads was extended eight years from the passage of said act.

By act of March 3, 1873, the time for the completion of the roads from St. Anthony to Brainerd and from St. Cloud to St. Vincent was extended nine months from the time limited by prior acts.

The limitations named in these several acts as to the time of completion had all expired prior to the date of Wenzel's settlement.

It therefore seems conclusive that the remedy offered by section three of the act of April 21, 1876, was intended to and does include entries of the character of that made by Mr. Wenzel, and it is not even necessary to apply the well-established principle of law that "remedial statutes must be construed liberally, and where the meaning is doubtful they must be construed to extend the remedy."

My decision of July 13th is accordingly modified so as to allow

the entry of Wenzel, he having made settlement and filing in accordance with the pre-emption laws. It is no part of my duty to here discuss the constitutionality of the act of 1876, nor the questions which may arise as to conflict of title by reason of its having a place on the statute books.

Those are questions for the courts.

My plain duty is to execute the laws under which I am called to act in accordance with their letter and spirit as I find them.

159 Very respectfully, H. M. TELLER, *Secretary.*

Vol. 3, 131, '81.
1026, C.
2394, M.
3004, M.

160 3—2950. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct.* 28, 1882.

Register and receiver, Crookston, Minn.

GENTLEMEN: By decision of Nov. 24th, 1880, in the case of John P. Pillard *et al.* (including Chas. Wenzel) *vs.* The St. Paul, Minneapolis and Manitoba Railway (formerly The St. Vincent Extension, St. Paul and Pacific Railroad) Company, the filing of said Wenzel, No. 1186, on the N. W. ¼, sec. 1, t'p 154, R. 48, was held for cancellation.

On appeal the Hon. Secretary of the Interior, on the 13th July last, affirmed so much of said decision as held Wenzel's filing for cancellation.

Accordingly said filing was cancelled on the 25th day of July last, and you advised of the action taken.

I now enclose a copy of the decision of the Hon. Secretary of the Interior of the 20th inst., wherein he modifies that part of his decision of July 13th, 1882, which affirmed the decision of this office as to Wenzel so as to allow the entry of Wenzel.

Accordingly I have this day reinstated the filing of Wenzel. You will note the same upon your records with a reference to the Hon. Secretary's decision.

The attorneys for the parties in interest will be advised by this office.

Very respectfully, L. HARRISON,
Acting Commissioner.

161 No. 2683. LAND OFFICE AT CROOKSTON,
MINNESOTA, *Nov.* 8, 1882.

It is hereby certified that, in pursuance of law, Charles Wentzel, residing at ——, in Polk county, State of Minn., on this day purchased of the register of this office south ½ northwest ¼ and lots 3 and 4 of section No. 1, in township No. 154 N., of range No. 48 W., of the 5th principal meridian, containing one hundred and fifty-seven and $\frac{40}{100}$ acres, at the rate of $2.50 per acre, amounting to 393 dol-

"settlers upon the lands of the St. Vincent Extension * * * who were actual settlers at the date of the act of June 22, 1874, and applied to file within the legal period, are protected by the statute, and their filings may be received," etc.

Wenzel's settlement was on June 2nd, 1874. It is true the act of June 22, 1874, was subsequently declared by one of my predecessors inoperative.

157 *Vide* case of Kemper *vs.* St. Paul and Pacific Railroad Co. (3 Copp., 170). Until that was done, however, all rules and regulations of your office relating to said act of 1874 were properly in force, and all acts of settlement in good faith in accordance therewith are entitled to recognition. The policy of the general law is to protect such settlers in their rights. Especially must such a policy prevail when a remedial statute is invoked, as in this case.

There remains to be considered, then, only the third point of the inquiry, viz:

Was the entry made at a time subsequent to the expiration of the grant to the railroad?

After a careful consideration of the act of 1876 in all its bearings, and especially of section three, as applicable to this case, I am of the opinion that in using the language "at a time subsequent to the expiration of such grant" Congress had reference to the dates named in the various granting acts to railroads as the dates at which the roads should be completed, and not to a time when by legislative or judicial action a forfeiture might be declared.

If such was not the intention of Congress, then this section is meaningless, for after declaration of forfeiture by legislative action or judicial decision the lands would be open to entry under the general pre-emption and homestead laws and without the intervention of a remedial statute.

The original grant under which the construction of the St. Paul and Pacific railroad was authorized was by act of Congress approved March 3, 1857.

158 By act of March 3, 1865, the grant was increased to ten sections per mile, the indemnity limits to twenty miles from the line of the roads or branches, and the time for the completion of said roads was extended eight years from the passage of said act.

By act of March 3, 1873, the time for the completion of the roads from St. Anthony to Brainerd and from St. Cloud to St. Vincent was extended nine months from the time limited by prior acts.

The limitations named in these several acts as to the time of completion had all expired prior to the date of Wenzel's settlement.

It therefore seems conclusive that the remedy offered by section three of the act of April 21, 1876, was intended to and does include entries of the character of that made by Mr. Wenzel, and it is not even necessary to apply the well-established principle of law that "remedial statutes must be construed liberally, and where the meaning is doubtful they must be construed to extend the remedy."

My decision of July 13th is accordingly modified so as to allow

the entry of Wenzel, he having made settlement and filing in accordance with the pre-emption laws. It is no part of my duty to here discuss the constitutionality of the act of 1876, nor the questions which may arise as to conflict of title by reason of its having a place on the statute books.

Those are questions for the courts.

My plain duty is to execute the laws under which I am called to act in accordance with their letter and spirit as I find them.

159 Very respectfully, H. M. TELLER, *Secretary.*

Vol. 3, 131, '81.
1026, C.
2394, M.
3004, M.

160 3—2950. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct.* 28, 1882.

Register and receiver, Crookston, Minn.

GENTLEMEN: By decision of Nov. 24th, 1880, in the case of John P. Pillard *et al.* (including Chas. Wenzel) *vs.* The St. Paul, Minneapolis and Manitoba Railway (formerly The St. Vincent Extension, St. Paul and Pacific Railroad) Company, the filing of said Wenzel, No. 1186, on the N. W. ¼, sec. 1, t'p 154, R. 48, was held for cancellation.

On appeal the Hon. Secretary of the Interior, on the 13th July last, affirmed so much of said decision as held Wenzel's filing for cancellation.

Accordingly said filing was cancelled on the 25th day of July last, and you advised of the action taken.

I now enclose a copy of the decision of the Hon. Secretary of the Interior of the 20th inst., wherein he modifies that part of his decision of July 13th, 1882, which affirmed the decision of this office as to Wenzel so as to allow the entry of Wenzel.

Accordingly I have this day reinstated the filing of Wenzel. You will note the same upon your records with a reference to the Hon. Secretary's decision.

The attorneys for the parties in interest will be advised by this office.

Very respectfully, L. HARRISON,
Acting Commissioner.

161 No. 2683. LAND OFFICE AT CROOKSTON,
MINNESOTA, *Nov.* 8, 1882.

It is hereby certified that, in pursuance of law, Charles Wentzel, residing at ——, in Polk county, State of Minn., on this day purchased of the register of this office south ½ northwest ¼ and lots 3 and 4 of section No. 1, in township No. 154 N., of range No. 48 W., of the 5th principal meridian, containing one hundred and fifty-seven and $\frac{40}{100}$ acres, at the rate of $2.50 per acre, amounting to 393 dol-

lars and 50 cents, for which the said Charles Wentzel has made payment in full, as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Charles Wentzel shall be entitled to receive a patent for the lot above described.

JOHN CROMB, *Register.*

162 No. 2683. RECEIVER'S OFFICE AT CROOKSTON, MINNESOTA, *Nov. 8th*, 1882.

Received from Charles Wentzel, of Polk county, Minnesota, the sum of three hundred and ninety-three dollars and fifty cents, being in full for the south one-half northwest one-quarter and lots three and four, quarter of section number one, in township No. 154, of range No. 48, containing one hundred and fifty-seven acres and forty hundredths, at $2.50 per acre.

$393.50. P. C. SLETTEN, *Receiver.*

[Written on the margin in red ink:] D. S. 1186.

163 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

It is hereby stipulated and agreed that the maps produced and used at the hearing of the cause of The Northern Pacific Railroad Company *v.* The St. Paul & Pacific Railroad Company *et al.* in this court and to be transmitted to the Supreme Court of the United States and which were used on the hearing of this cause or copies of the same may, when so transmitted to said court, be used on the hearing of this cause on the appeal already taken therein, but the hearing of this cause on the appeal shall not be delayed by reason of this stipulation or because of such maps not being returned to the Supreme Court at the time this cause is reached for argument.

Dated October 7, A. D. 1886.

R. B. GALUSHA,
Solicitor for Complainant.
JAMES B. BEALS,
Solicitor for Defendant.

Endorsed: "Filed Oct. 8th, 1886. Oscar B. Hillis, clerk."

164 And afterwards, to wit, on the 15th day of September, A. D. 1885, this cause came on for hearing, as appears by the record entry in Term Minutes "F," page 764, said entry being in the words and figures following, viz:

United States Circuit Court, District of Minnesota.

Term Minutes, June Term, A. D. 1885, September 15th, 1885.

Before Judges Brewer and Nelson.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

The above-entitled causes regularly coming on for hearing, the plaintiff appears by R. B. Galusha, Esq., S. U. Pinney, Esq., and George B. Young, Esq., its solicitors, and the defendants by James B. Beals, Esq., and said Beals also appearing for the State of Minnesota. Thereupon said causes are argued by counsel; and, the hearing of the same not being concluded at the hour of adjournment, it is ordered that further proceedings therein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

And afterwards, to wit, on the 16th day of September, this cause came on for further hearing before Judges Brewer and Nelson, the minutes of which hearing were entered in Term Minute "F," page 767, and are in the words and figures following, viz:

United States Circuit Court, District of Minnesota.

Term Minutes, June Term, A. D. 1885, September 16th, 1885.

165 THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES WENZEL.

THE ST. PAUL, MINNEAPOLIS & MANITOBA R'Y CO.
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

The above-entitled causes coming on for further hearing, the parties again appear, by their respective attorneys, and said causes are further argued by counsel; and, the hearing of said causes not being concluded at the hour of adjournment, it is ordered that further proceedings therein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

And afterwards, to wit, on the 17th day of September, A. D. 1885, the hearing of the above-entitled cause was concluded and by Judge Brewer taken under advisement, as appears of record in Term Minutes "F," page 770, in the words and figures following, viz:

United States Circuit Court, District of Minnesota.

Term Minutes, June Term, A. D. 1885, September 17th, 1885.

THE ST. PAUL, MINNEAPOLIS & MANITOBA R'Y CO.
vs.
CHARLES WENZEL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

The above-entitled causes again coming on for further hearing, the parties appear, by their respective solicitors, and said causes are further argued by counsel, duly submitted, and by the court taken under advisement.

166 And afterwards, to wit, on the 3rd day of March, A. D. 1886, the following opinion was filed in this cause, said opinion being in the words and figures following, viz:

Opinion.

167 United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH *et al.*

THE SAME
vs.
CHARLES WENZELL.

These cases are so nearly alike that they may be considered together. The complainant claims to be the equitable owner of certain lands, the legal title to which is in defendants, and files these bills to enforce such claim. Both tracts lie along the line of the St. Vincent Extension of complainant's railway and north of the indemnity limits of the Northern Pacific road. The definite location of this line was made in 1871 and a map thereof filed with the Secretary of the Interior and approved December 20th, 1871. The Greenalgh land is within ten miles of this line and the Wenzel tract within six miles. The road was built past the Greenalgh land in November, 1872, and finished to St. Vincent by November, 1878. After the filing of the map of the definite location and on February 15, 1872, the Secretary of the Interior withdrew from sale or other disposal the odd-numbered sections within twenty miles. On June 18, 1872, the Secretary directed the vacation of this order of withdrawal, notice of which was received at the local land office on July 5, 1872. This order of vacation was itself revoked on September 4th, 1872.

On June 26th, 1872, Greenalgh settled on the land in controversy in his case, subsequently filed and proved up his claim, and received a patent.

168 Wenzel settled on his tract June 2, 1874, and filed his claim September 2, 1874. The various acts of Congress upon which complainant's title rest were nearly all quoted in the opinion just filed in the case of The Northern Pacific Company *vs.* the complainant, and I shall simply refer to them here.

In the outset defendants challenge the validity of complainant's grant in this upper part of the St. Vincent Extension, and upon three grounds:

First. That this was Indian lands in 1857, and therefore never subject to the grant; second, the change authorized by the act of '71 was not in accord with the legislation of Minnesota, and, third, the line of definite location was not within the scope of that act. Neither is sufficient.

First. The Indian title was extinguished by treaty May 5th, 1864. The 6th section of the act of 1857 reads:

"SEC. 6. And be it further enacted, That in case any of the lands on the line of said roads or branches are within any Indian territory no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State until the Indian title to the same shall have been extinguished."

Now, in the Lawrence, Leavenworth and Galveston railroad case, 92 U. S., 743, the question was whether words of general grant would operate on lands in an Indian reservation created by treaty stipulation, and the court says: "The grant is silent as to such a purpose, but if it was to take effect in the Osage country on the surrender of the Indian title it would have so declared."

This act contained the provision suggested.

169 Under this rule section six opened these lands to this grant when the Indian title ceased, which was before the definite location. The act of 1865, which restored the grant, was passed after the Indian title had been extinguished, and operated as a new grant, unobstructed by any prior Indian title.

Second. The case of Nash *vs.* Sullivan, 29 Minn., 206, is conclusive as to the harmony between the act of Congress and the State legislation.

It matters not that the decision was made to uphold a patent title. The *ratiodecidendi* affirms the accord and governs all cases. The action of the State, as well as the General Government, is an equal affirmation.

Third. Any question that might otherwise exist as to the line of definite location being within the scope of the congressional grant is put at rest by the act of Congress of March 3, 1873, which declares "that the time for the completion * * * of the road from St. Cloud to St. Vincent, in said State, as now located, with the approval of the Secretary of the Interior, be extended for the period of nine months." I have no doubt of the validity of the complainant's title in this portion of its grant.

Thus far the way is clear, but after all the question in these cases

arises under the acts of Congress of June 22nd, 1874, and April 21st, 1876, and of the State — of Mar. 1st, 1877, and Mar. 9th, 1878.

It is claimed generally that prior to any final vesting of title in the complainant to these lands and while the full control and disposal of them remained with Congress that body exempted
170 them from the operation of complainant's grant, and that the State took similar action. Before examining the acts referred to let us see when, under what circumstances, and to what extent but for them and for the settlement of defendants the title to these lands would have passed to complainant. The complainant took nothing by the withdrawal. A withdrawal passes no title. It only prevents other titles from accruing. A definite location of the road identifies the tracts within the place limits, and a title thereto passes by relation as of the date of the grant, subject to defeasance upon failure to perform the conditions of the grant within the time limited. The title to indemnity lands passes only upon selection. Wenzel's land was within the place limits; Greenalgh's not; for, since the decisions in St. Paul R. R. Co. *vs.* Winona R. R. Co., 112 U. S., 730, and Winona R. R. Co. *vs.* Barney, 113 U. S., 628, it must be considered as settled that the grant of lands in place was limited to six sections, and that the additional four sections were simply a grant by quantity. The selection of the Greenalgh land was made by the company on Mar. 13, 1880, long after the several acts referred to and long after Greenalgh's entry. Until that time the company had no pretence of title, and all that it can claim is that under the existing laws and withdrawal no one else could acquire any interest therein prior thereto. As to Wenzel's tract, the definite location operated to transfer, as of the date of the grant, the title to the company, subject to forfeiture on failure to build the road within the time limited.

After such failure the grantor had power to forfeit the
171 grant and retake the land. Having power to forfeit the entire grant absolutely, it had the lesser and included power of forfeiting a part and conditionally.

The act of June 22nd, 1874, by its first section, extends the time for the completion of this road to March 3, 1876, and "no longer, upon the following conditions: That all rights of actual settlers and their grantees who have heretofore in good faith entered upon and actually resided on any of said lands prior to the passage of this act, or who otherwise have legal rights in any of such lands, shall be saved and secured to such settlers or other persons in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad."

The second section requires acceptance by the company as a condition of receiving the benefits of the act. No acceptance was ever made. The first and third sections of the act of April 21, 1871, read as follows:

"SEC. 1. All pre-emption entries or entries in compliance with any law of the United States of the public lands made in good faith by actual settlers upon tracts of land of not more than one hundred and sixty acres each within the limits of any land

grant prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land office of the district in which such lands are situated, or after their restoration to market by order of the General Land Office, and where the pre-emption laws have been complied with and proper proofs thereof have been made by the parties holding such tracts or parcels,
172 they shall be confirmed, and patents for the same shall issue to the parties thereto."

"SEC. 3. All such pre-emption entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such a claim to a patent therefor." U. S. Stat., sec. 206, 207, 208.

Section 10 of the State act of Mar. 1, 1877, provides that the complainant "shall not in any manner, directly or indirectly, acquire or become seized of any right, title, interest, claim, or demand in or to any piece or parcel of land * * * upon which any person or persons have in good faith settled and made or acquired valuable improvements thereon on or before the passage of this act;" that the Governor shall deed and relinquish such lands to such settlers, and also that "upon the acceptance of the provisions of this act by said company it shall be deemed by the Governor of this State as a relinquishment by said company of all such lands so occupied by such actual settlers." No acceptance, as above provided for, was ever made by the company. Section 3 of the act of March 9, 1878, which is an act amendatory of the act of 1877, contains a proviso that "nothing shall be construed under this act which will waive the right of the State to receive the full grant of ten sections per mile of completed road from the United States," and also that upon the completion of a certain-named portion of the line" the Governor of the State may convey or certify to such company
173 all the rest, residue, and remainder of the lands granted by the United States to the State of Minnesota to aid in the construction of said line of railroad."

I believe this brings all the material facts before us for consideration. With reference to the act of June, 1874, it may be regarded, on the one hand, as merely a proposition calling for acceptance and, no acceptance being given, wholly without force; on the other hand, as a declaration by the owner of the land of the conditions upon which alone the proffered grant then subject to forfeiture would be continued in force—in fact, a legislative declaration of forfeiture of an existing but unearned grant, coupled with a tender of a new grant upon certain conditions, the acceptance provided for being only the ordinary anticipatory declaration of an intent to comply with the conditions upon which the grant was made, the formality of which is waived by an actual compliance with the conditions.

So the act of March, 1877, may be subject to the like criticism of being simply an offer without acceptance, and to the further criticism of an implied repeal by the act of March, 1878, which affirms the right

of the State to the entire grant from the United States, and authorizes its conveyance to the company upon the completion of a specified portion of the road. On the other hand, it may be said that the act of 1877, in direct and explicit terms, as was within the power of the Legislature to do, takes from the company every tract occupied by *bona fide* settlers; that the purpose of the acceptance was only information to the Governor and to guide his official action, and in no manner limited the legislative transfer to *bona fide* settlers of
174 all rights and interests in these tracts under the grant from the United States; that the act of 1878, being in terms only an amendment of that of 1877 and containing no express appeal of said section 10, is to be construed in harmony therewith, and means simply to authorize a transfer to the company of all lands within the grant not otherwise disposed of by the provisions of the act.

With reference to the act of April, 1876, it may be urged that the term "entry" means the filing of the claim with the land office, and not the mere settlement on the land; that Greenalgh's entry was not made during the revocation of the withdrawal; that his settlement, though after the order of revocation, was prior to the receipt of that order at the land office, and therefore prior to the actual restoration to market; that while Wenzel's settlement was made after the expiration of the time limited for the building of the road, yet his entry was not until after the act of June 22, 1874, extending the time, and thus while the grant was in full force; further, that the words "such pre-emption entries" in section 3 refer to entries of the kind named in sections 1 & 2, and mean only entries prior to the receipt at the local land offices of the notices of withdrawal or after the restoration to market, and therefore do not cover a settlement or entry like his; and, finally, that under the decision in Schulenberg *vs.* Harriman, 21 Wall., 62—a decision prior by some three years to the act of 1876—a grant does not expire by the mere nonperformance of a condition subsequent, but only upon some legal forfeiture, and hence that said third section has no application to the present case. On the other hand, it may be said that the term "entry" in its general use signifies a settlement with a view
175 to purchase or homesteading; that, at any rate, it relates back to the time of such settlement and has force from that date and obviously is used here to cover and protect rights originating from the settlement; that both withdrawals and vacations thereof date and have operative force from the time they are ordered at Washington, and not from the time notices thereof are received at the local land offices; that if Wenzel's entry was not technically until after the act of June 22, 1874, extending the grant, it was protected by the very terms of that extension; that the words "such pre-emption entries," though referring back, only mean pre-emption entries in good faith by actual settlers, and do not include all the circumstances attending such entries as are named in the prior sections, and that the expression "expiration of grant" must refer to the time limited in the original granting act for the performance of the condition, for if it referred to the actual forfeiture it would be meaningless, as then the land would be covered by the general acts

for disposal of public lands. I have thus endeavored to outline the principal suggestions on both sides in reference to the force and effect of these several statutes. I propose no further comment on them separately, but state some propositions based upon them collectively:

First. All were passed after the time given for the completion of the road, when there had been a non-performance of the conditions of the grant, and when, therefore, there existed the right of absolute and total forfeiture by the grantor, the United States, and of resumption and transfer by the State to another beneficiary.

Second. Nothing can be plainer than that both Congress and
176 the State Legislature intended to give to actual, *bona fide* settlers priority to the railroad company. Such intent breathes in every statute and permeates every section.

Third. All legislative land grants are to be regarded not merely as contracts, but also as laws. As such they are subject to the same rules of interpretation that govern other laws, and a primary rule is that the intent of the Legislature is to be sought, and, when ascertained, controls. The technical rules which govern the interpretation of private contracts must always yield to the single enquiry of the intent of the one party, the Legislature.

Fourth. The legal title is in the defendants. Complainant rests upon its alleged equitable rights. There is no equity in striking down a legal title when so to do involves a disregard of the manifest intent of the original owner — grantor of such legal title.

Decrees will be entered in favor of the defendants, dismissing the bills at costs of complainant.

Endorsed: "Filed March 3rd, 1886. Oscar B. Hillis, clerk."

177 And afterwards, to wit, on the 3rd day of March, A. D. 1886, the following order for decree dismissing bill at complainant's cost was entered of record in Term Minutes "G," page 160, in the words and figures following, viz:

Order for Decree of Dismissal.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1885, March 3, 1886.

Present: Hon. David J. Brewer and Hon. R. R. Nelson, judges.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH and JAMES GREENHALGH.

The above-entitled causes having been heretofore fully heard upon the pleadings, final proofs, agreed statement of facts, and argu-

ments of counsel, duly submitted, and by the court taken under advisement, now, the court, after due consideration thereof and being fully advised in the premises, announces its decision concerning the same and files said decision in writing herein. Pursuant to said decision it is considered, ordered, and adjudged by the court that a decree be entered herein "in favor of the defendants, dismissing the bill at the cost of complainant."

178 And afterwards, to wit, on the 4th day of March, A. D. 1886, the following final decree was filed and entered of record in Term Minutes "G," page 167, in the words and figures following, viz:

Final Decree and Order Allowing Appeal.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1885, March 4th, 1886.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

This cause came on to be heard upon the pleadings and proofs and agreed statement of facts, and was argued by counsel for the respective parties, and upon consideration thereof it is now here adjudged and decreed that the said complainant's bill of complaint in this cause be, and the same hereby is, dismissed for want of equity, with costs to be taxed against said complainant and in favor of said defendant.

And hereupon, the said complainant praying an appeal to the Supreme Court of the United States, the same is hereby allowed upon said complainant filing a bond, with sureties, in the sum of five hundred dollars, conditioned according to law, to be approved by a judge of this court.

DAVID J. BREWER,
Circuit Judge.

179 And afterwards, to wit, on the 11th day of March, A. D. 1886, the following bond on appeal was filed and entered of record in this cause, said bond being in the words and figures following, viz:

Bond on Appeal.

Supreme Court of the United States.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

Know all men by these presents that we, H. C. Ives and A. L. Mohler, of the city of Saint Paul, in the State of Minnesota, are held

and firmly bound unto Charles Wenzell of Marshal county, in said State, in the sum of five hundred dollars, to be paid to the said Charles Wenzel, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 8th day of March, A. D. 1886.

Whereas the above-named Saint Paul, Minneapolis and Manitoba Railway Company hath taken an appeal to the Supreme Court of the United States to reverse the decree made and rendered in the above-entitled cause by the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Saint Paul, Minneapolis and Manitoba Railway Company shall prosecute its said appeal to effect and answer all
180 costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. C. IVES. [SEAL.]
A. L. MOHLER. [SEAL.]

Sealed and delivered in presence of—
R. B. GALUSHA &
HENRY KROGSTEAD.

DISTRICT OF MINNESOTA, *ss:*

H. C. Ives and A. L. Mohler, of the city of Saint Paul, in said district, each for himself, being duly sworn, says that he is worth the sum of one hundred thousand dollars over and above all debts by him owing in property situated in said district not exempt by law from execution, and that he is a resident and freeholder of said city of St. Paul; and further saith not.

H. C. IVES.
A. L. MOHLER.

Subscribed and sworn to before me this 8th day of March, 1886.
[SEAL OF NOTARY.] HENRY KROGSTEAD,
Notary Public, Ramsey County, Minnesota.

Endorsed on back: "Approved in open court March 11th, 1886. David J. Brewer, circuit judge. Filed March 11th, 1886. Oscar B. Hillis, clerk."

181 UNITED STATES OF AMERICA.

Circuit Court of the United States.

DISTRICT OF MINNESOTA, *ss:*

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 181 pages, numbered consecutively from

1 to 181, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court.

Seal U. S. Circuit Court, Dist. of Minnesota.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh year.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota. —— —— *vs.* —— ——. Return to Supreme Court.

Endorsed on cover: Minnesota C. C. U. S. No. 246. The St. Paul, Minneapolis & Manitoba Railway Company, appellant, *vs.* Charles Wenzel. Filed October 25, 1886.

Office Supreme Court U. S.
FILED.
OCT 13 1890
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 25.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,

vs.

CHARLES WENZEL.

BRIEF FOR APPELLANT.

S. U. PINNEY,
Of Counsel for Appellants.

JOURNAL PRINTING CO., PRINTERS AND STEREOTYPERS, MADISON, WIS.

See no 24. for appellee brief

1 to 181, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court.

Seal U. S. Circuit Court, Dist. of Minnesota.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh year.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota. —— —— *vs.* —— ——. Return to Supreme Court.

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THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,

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BRIEF FOR APPELLANT.

S. U. PINNEY,
Of Counsel for Appellants.

JOURNAL PRINTING CO., PRINTERS AND STEREOTYPERS, MADISON, WIS.

See No 24. for appellee's brief

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 25.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,

vs.

CHARLES WENZEL.

The pleadings and proofs in this case are not materially different from those in the case of the same appellant against Charles W. Greenalgh and James Greenalgh, No. 24, on the docket of the present term and herewith presented, except that, first, the settlement under which appellee claims was made June 2, 1874, and his claim was filed September 2, 1874, after the expiration of the time for building the road of appellant, prescribed by the acts of Congress of March 3, 1857, March 3, 1865, and March 3, 1873, and the road had not been completed opposite these lands when the settlement was made. Second, the lands in question are within six miles of the located line of the road.

The validity of the claim of the defendant was contested before the local land officers and before the Commissioner of the General Land Office and the Secretary of the Interior on appeal, but the ruling was adverse to the appellant and the lands were patented by the United States to the defendant. The object of this suit is to establish the equitable rights of the appellant as against the patentee, the defendant.

The defendant relies in his answer in this case upon section 3 of the act of Congress of April 21, 1876. This act is as follows:

"Sec. 1. All pre-emption entries, or entries in compliance with any law of the United States, of the public lands, made in good faith, by actual settlers, upon tracts of land of not more than one hundred and sixty acres each, within the limits of any land grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land office of the district in which such lands are situated, or after their restoration to market by order of the general land office, and where the pre-emption laws have been complied with, and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed, and patents for the same shall issue to the parties entitled thereto.

"Sec. 2. When at the time of withdrawal, as stated in the preceding section, valid pre-emption claims existed upon any lands within the limits of any such grants which afterward were abandoned, and, under the decisions and rulings of the land department, were re-entered by pre-emption claimants who have complied with the laws governing pre-emption entries, and shall make the proper proofs required under such laws, such entries shall be deemed valid, and patents shall issue therefor to the person entitled thereto.

"Sec. 3. All such pre-emption entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such a claim to a patent therefor." U. S. Stat., secs. 206, 207, 208.

The defendant *Wenzel* made his proofs in the usual form, and the history of his claim and proceedings thereon in the Land Department and in the local land office is contained in the proofs printed in the case of the same appellant against Greenalgh *et al.*, and for these reasons, as the counsel in the two cases are the same, it is not deemed necessary to print a fuller statement of the case, nor to discuss any ques-

tions except such as are peculiar to this case. All other questions are fully stated and discussed in the case of the same complainant against Greenalgh *et al.*, No. 24, of the present term.

ASSIGNMENT OF ERRORS.

The appellant assigns as error that:

1st. The circuit court erred in dismissing the complainant's bill.

2d. The circuit court erred in refusing to grant the complainant the relief prayed for in and by its bill.

3d. The circuit court erred in holding that the act of Congress of April 21, 1876, sections 1 and 3, applied to the facts of this case. U. S. Stat., secs. 206–208.

4th. The circuit court erred in holding that the act of Congress of June 22, 1874, applied to or constituted any objection to the relief prayed for.

5th. The circuit court erred in holding that the acts of the legislature of the state of Minnesota of March 1, 1877, and March 9, 1878 (ch. 71, Special Laws Minn., 1878, secs. 1–3), constituted any objection or obstacle to granting the plaintiff the relief prayed for. Ch. 201, Special Laws Minn., 1877, sec. 10.

6th. The circuit court erred in deciding that the legal title to the lands in controversy is rightfully in the defendant.

I.

The Land Department erred in patenting the lands in question to the defendant, *Wenzel*, under the supposed authority of section 3 of the act of Congress of April 21, 1876. Its action was founded on a mistake of law and upon a mistaken view of the scope and meaning of that act. It has been seen that the title to this land, by the location of the line, was vested in the state of Minnesota for the use of

the railroad company long before *Wenzel* made his settlement and entry. The lands were withdrawn upon the location of the line, and notification of such withdrawal was given to and received by the local land office February 15, 1872. Orig. Rec., 122.

The defendant settled on the lands June 2, 1874, and filed his declaratory statement September 2, 1874. The title to this land by the location of the line had vested in the state of Minnesota for the use of the railroad company long before he had made his settlement or entry. No withdrawal of these lands from market by the Land Department was necessary to protect the rights of the state or company. It became the duty of the secretary to withdraw the lands from market. This duty he performed.

In *Taboreck v. Railroad Company*, 2 McCrary, 411, it was held that the act of April 21, 1876, did not apply to a case where prior to any such pre-emption or homestead entry the land had been specially granted by act of Congress, and had fully vested in the grantee, which is this case. Speaking of this question, McCRARY, Circuit Judge, said:

"The act does not, in my opinion, apply to a case where, prior to any such pre-emption or homestead entry, the lands had been specially granted by act of Congress and had fully vested in the grantee. To give it such a construction would be equivalent to saying that Congress intended to take lands from an owner whose title was perfect and confer them upon another. It is conceded that the line had been definitely fixed within the meaning of the act, before any steps were taken by the complainant to acquire title under the homestead or pre-emption laws. It follows from this fact, as already shown, that the title vested in the grantee, the lands being within the twenty-mile limits. The act of Congress was itself a grant as well as a law, and had all the force of a patent. When the condition (the definite location of the line) was performed the title became absolute. It cannot be supposed that Congress intended the act of

1876 to divest titles which had previously been perfected. That act, like previous laws of a similar kind, was intended to give force and effect to the principle that 'when an individual in the prosecution of a right does everything which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him.'"

Section 1 of this act relates only to entries within the limits of a land grant *made prior* to the time when notice of the withdrawal of lands embraced in such grant was received at the local land office or made *after their restoration* to market by order of the General Land Office. This last cla[illegible] must refer only to a case where the General Land Office *has authority* to restore the lands to market, and where, in point of law, that authority has been regularly exercised. It is difficult to understand what necessity could exist for the second clause of section 1, unless it be that re storing the lands to market did not restore them to the operation of the pre-emption and homestead laws. There can be no pretense that *Wenzel's* pre-emption is valid or can be sustained under the first section.

The second section relates entirely to cases "where at *the time of withdrawal*, as stated in the *preceding* section, valid *pre-emption claims* existed upon any lands within the limits of any such grants which afterwards *were abandoned*, and under the decisions and rulings of the Land Department *were re-entered by pre-emption claimants* who have complied with the laws governing pre-emption entries." The lands in all cases within the provisions of section 2 would not be affected by the grant at all. By the language and terms of all land grants such lands are excepted from them and indemnity given in lieu thereof. Lands covered by a pre-emption claim existing at the time of the definite location of the line might thereafter be abandoned, but the lands would not enure to the grantee of the land grant, but

would be excepted from it and become subject to pre-emption by other claimants. *Railroad Company v. Whitney*, 132 U. S., 357. Again, section 2 relates to pre-emptions existing *at the time of withdrawal*, as stated in the preceding section. It could not, therefore, relate to lands, the title to which had before passed to the state by virtue of the definite location of the road, as held in *Taboreck v. Railway Co., supra.*

This section simply enacted and put in the form of statutory law, what the courts have held was the proper construction and effect of the railroad grants without it.

The lands in question were not under valid pre-emption, either at the time of the definite location of the line or at the time of the withdrawal of the lands by the Secretary of the Interior, February 6, 1872, or at the time of the receipt of notification of such withdrawal at the local office, February 15, 1872. It is, therefore, plain that the first and second sections of the act have no relevancy whatever to such a case as *Wenzel's*. *Van Wyck v. Knevals*, 106 U. S., 360, adjudicated after the act of April 21, 1876.

But section 3 is relied on, and it reads as follows:

"Section 3. All *such* pre-emption entries which may have been made *by the permission of the Land Department*, or *in pursuance of the rules and instructions thereof* within the limits of any land grant at a time subsequent to *expiration* of such grant, shall be deemed valid."

1. There would seem to be no warrant whatever in the act for extending this section to lands the title to which had vested in the state upon the definite location of the road, and as to which no withdrawal was necessary, or to any other than entries made after forfeiture or adjustment and before restoration of the lands to settlement and entry.

It was not the intention of Congress to subject all the land grants in the country to pre-emption, even though the

congressional time limited for the construction of the roads had elapsed. It was not intended by this act to make either a general or partial resumption of these grants. The language of section 3 repels such an inference. It refers to such pre-emptions as may be within the reason of the previous sections. The word "such" cannot be rejected. Some force and effect must be given to it.

The framers of this act must have known, indeed are conclusively persumed to have known, of the decision in *Schulenberg v. Harriman*, 21 Wall., 62, 63, made about three years before, in which the court say:

"The provision in the act of Congress that all lands remaining unsold after ten years shall revert to the United States, if the road be not then completed, is no more than a provision that the grant shall be void if the condition subsequent be not performed. In Shepard's Touchstone it is said: 'If the words in the close or conclusion of a condition be thus: That the land shall return to the enfeoffer, etc., or that he shall take it again and return it to his own profit, or that the lands shall revert or that the feoffer shall *recipere* the lands, these are either of them good words to give a reentry and by these words the estate will be made conditional. The prohibition against further sales if the road be not completed within the period prescribed, *adds nothing to the force of the provision.* A cessation of sales in that event is implied in the condition that the lands shall revert: IF THE CONDITION BE NOT THEN ENFORCED THE POWER TO SELL CONTINUES AS BEFORE ITS BREACH, LIMITED ONLY TO THE OBJECTS OF THE GRANT AND THE MANNER OF SALE PRESCRIBED IN THE ACT."

The neglect to perform the condition does not, *ipso facto*, determine the estate, it only exposes it to be defeated and determined at the election of the grantor, to be signified by some act equivalent to an entry; at common law the title still remains in the grantee. When the estate has *ipso facto* ceased, by operation of the condition, it cannot be waived without a new grant; but a voidable estate may be confirmed and the condition dispensed with. The condition may be waived.

"If the whole of the proposed road has not been completed any forfeiture consequent thereon can be asserted only by the grantor, the United States, through judicial proceedings, or through the action of Congress. *Schulenberg v. Harriman*, 21 Wall., 44. A third party cannot take upon himself to enforce conditions attached to the grant when the government does not complain of their breach. The holder of an invalid title does not strengthen his position by showing how badly the government has been treated with respect to the property."

Van Wyck v. Knevals, 106 U. S., 360, 368.

Section 3, upon which the defendant relies, is in no just sense a resumption of the grant restoring to the United States the title already vested in the state.

This title remained intact for the purposes for which the grant was made, and it was not intended by the section in question that the pre-emption laws should apply to lands not owned by the United States, but the legal title to which was vested in the state.

It was not intended that while the state should be disposing of these lands for railroad purposes, the Land Department might also be exercising the power of sale and disposition over them for *entirely different purposes*.

The result of the defendant's contention would be that, although the railroad company might complete the road and earn the lands, still the right of pre-emption and purchase of the same might continue to be exercised in respect to them through the Land Department of the United States.

Again, the words of reference in section 3, "all such pre-emptions," refer to such as are *made in good faith*. The entry of Wenzel was not made in good faith. He knew the lands were within the six-mile limits of the road as located. He did not make his entry subsequent to the expiration of the grant, for the grant has never expired, within the meaning of section 3.

If, by reason of entry for condition broken, the United States had regained title, full effect to this section could be given to pre-emption entries made thereafter and before an order of the department declaring the lands restored to entry and settlement. This we believe to be its true meaning.

For the reason also, that his settlement and entry were not in good faith, *Wenzel's* case is not within the tenth section of the state act of March 1, 1877. The lands attempted to be taken from the railroad company and secured to settlers by that section were those "upon which any person or persons have *in good faith* settled, and made or acquired valuable improvements thereon on or before the passage of this act, or upon any of said lands upon which had been filed any *valid* pre-emption or homestead filing or entry, . . . and upon the acceptance of the provisions of this act, it shall be deemed by the Governor of this state as a relinquishment by said company of all such lands," and the Governor shall relinquish them to the United States. The company never accepted this act, nor took any action under it. Besides, it was repealed before the road was constructed, as we have contended in case No. 24 on this docket.

2. It is not shown that *Wenzel's* pre-emption entry had been made "by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant." We are not aware of any law or rules authorizing pre-emption entries within the limits of a land grant. But possibly such rules may exist.

3. The right to declare a forfeiture and enter as for breach of condition subsequent as to public lands is an attribute of legislative or of judicial power. If to be done by legislative action, such power cannot be delegated to a department officer. There is no declaration that all lands within the limits of land grants, or of any particular one, subsequent to expiration of the time for building the road, shall be